

GARY KILBOURNE v. THE COCA-COLA COMPANY, et al.
DEFENDANTS' NOTICE OF REMOVAL TO FEDERAL COURT

INDEX OF EXHIBITS TO
DEFENDANTS' NOTICE OF REMOVAL

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Exhibit B	Notice of Service of Process, Civil Cover Sheet, Notice of Case Assignment and Case Management Conference on Mandatory eFile Case, Alternative Dispute Resolution in Civil Cases, ADR Information Form, Stipulation and Use Alternative Dispute Resolution (ADR), Summons, Complaint	Pages 41-80

EXHIBIT A



CORPORATION SERVICE COMPANY

Notice of Service of Process

CB5 / ALL
Transmittal Number: 12337573
Date Processed: 03/24/2014

Primary Contact: Janel McCurrie
Coca-Cola Refreshments Inc.
One Coca-Cola Plaza
The Coca-Cola Company, Legal Department
Atlanta, GA 30313

Entity:	Coca-Cola Refreshments USA, Inc. Entity ID Number 1683019
Entity Served:	Coca-Cola Refreshments USA, Inc.
Title of Action:	Gary Kilbourne on behalf of himself and all others similarly situated and on behalf of the general public vs. The Coca-Cola Company
Document(s) Type:	Summons/Complaint
Nature of Action:	Class Action
Court/Agency:	San Diego County Superior Court, California
Case/Reference No:	37-2014-00007465-CU-OE-CTL
Jurisdiction Served:	California
Date Served on CSC:	03/21/2014
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	William Turley 619-234-2833

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William Turley, Esq. (SBN 122408); David Mara, Esq. (SBN 230498) The Turley Law Firm, APLC 625 Broadway, Suite 635 San Diego, CA 92101 TELEPHONE NO.: (619) 234-2833 FAX NO.: (619) 234-4048		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/20/2014 at 10:51:46 AM Clerk of the Superior Court By Alicia Fletes, Deputy Clerk	
ATTORNEY FOR (Name): Plaintiffs Ronald Young			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central			
CASE NAME: Gary Kilbourne v The Coca-Cola Company, et al., and DOES 1-100			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2014-00007465-CU-05-CTL JUDGE: Judge Timothy Taylor DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPDWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPDWD (23) Non-P/DPDWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPDWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
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3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **March 19 2014**
 William Turley, Esq.

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)
CIVIL CASE COVER SHEET
 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties In Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties In Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease	Construction Defect (10)
Other PVPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract (not unlawful detainer or wrongful eviction)	Claims Involving Mass Tort (40)
Asbestos (04)	Contract/Warranty Breach—Seller	Securities Litigation (28)
Asbestos Property Damage	Plaintiff (not fraud or negligence)	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Negligent Breach of Contract/Warranty	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Product Liability (not asbestos or toxic/environmental) (24)	Other Breach of Contract/Warranty	Enforcement of Judgment
Medical Malpractice (45)	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment (20)
Medical Malpractice—Physicians & Surgeons	Collection Case—Seller Plaintiff	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Other Promissory Note/Collections Case	Confession of Judgment (non-domestic relations)
Other PVPD/WD (23)	Insurance Coverage (not provisionally complex) (18)	Sister State Judgment
Premises Liability (e.g., slip and fall)	Auto Subrogation	Administrative Agency Award (not unpaid taxes)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Other Coverage	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Other Contract (37)	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	Contractual Fraud	Miscellaneous Civil Complaint
Other PVPD/WD	Other Contract Dispute	RICO (27)
Non-PVPD/WD (Other) Tort	Real Property	Other Complaint (not specified above) (42)
Business Tort/Unfair Business Practice (07)	Eminent Domain/Inverse Condemnation (14)	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Wrongful Eviction (33)	Injunctive Relief Only (non-harassment)
Defamation (e.g., slander, libel) (13)	Other Real Property (e.g., quiet title) (26)	Mechanics Lien
Fraud (16)	Writ of Possession of Real Property	Other Commercial Complaint Case (non-tort/non-complex)
Intellectual Property (19)	Mortgage Foreclosure	Other Civil Complaint (non-tort/non-complex)
Professional Negligence (25)	Quiet Title	Miscellaneous Civil Petition
Legal Malpractice	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Partnership and Corporate Governance (21)
Other Professional Malpractice (not medical or legal)	Unlawful Detainer	Other Petition (not specified above) (43)
Other Non-PVPD/WD Tort (35)	Commercial (31)	Civil Harassment
Employment	Residential (32)	Workplace Violence
Wrongful Termination (36)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Elder/Dependent Adult Abuse
Other Employment (15)	Judicial Review	Election Contest
	Asset Forfeiture (05)	Petition for Name Change
	Petition Re: Arbitration Award (11)	Petition for Relief From Late Claim
	Writ of Mandate (02)	Other Civil Petition
	Writ—Administrative Mandamus	
	Writ—Mandamus on Limited Court Case Matter	
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 2 of 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7072	
PLAINTIFF(S) / PETITIONER(S): Gary Kilbourne	
DEFENDANT(S) / RESPONDENT(S): The Coca-Cola Company et.al.	
GARY KILBOURNE VS THE COCA-COLA COMPANY [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2014-00007465-CU-OE-CTL

CASE ASSIGNMENT

Judge: Timothy Taylor

Department: C-72

COMPLAINT/PETITION FILED: 03/20/2014

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	08/22/2014	09:15 am	C-72	Timothy Taylor

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 010313 at www.sdcourt.ca.gov for guidelines and procedures.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

**ALTERNATIVE DISPUTE RESOLUTION
IN CIVIL CASES**



Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

NAME OF COURT: _____

ADR Information Form

This form should be filled out and returned,
within 10 days of the resolution of the dispute, to:



1. Case name: _____ No. _____
 2. Type of civil case: ☐ PVPD-Auto ☐ PVPD-Other ☐ Contract ☐ Other (specify): _____
 3. Date complaint filed _____ Date case resolved _____
 4. Date of ADR conference _____ 5. Number of parties _____
 6. Amount in controversy ☐ \$0-\$25,000 ☐ \$25,000-\$50,000 ☐ \$50,000-\$100,000 ☐ over \$100,000 (specify): _____
 7. ☐ Plaintiff's Attorney ☐ Cross Complainant's Attorney 8. ☐ Defendant's Attorney ☐ Cross Defendant's Attorney
- | | |
|------------------------|------------------------|
| NAME _____ | NAME _____ |
| ADDRESS _____ | ADDRESS _____ |
| () _____ | () _____ |
| TELEPHONE NUMBER _____ | TELEPHONE NUMBER _____ |
9. Please indicate your relationship to the case:

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Plaintiff's attorney	<input type="checkbox"/> Defendant	<input type="checkbox"/> Defendant's attorney
<input type="checkbox"/> 3rd party defendant	<input type="checkbox"/> 3rd party defendant's attorney	<input type="checkbox"/> Other (specify): _____	
 10. Dispute resolution process:

<input type="checkbox"/> Mediation	<input type="checkbox"/> Arbitration	<input type="checkbox"/> Neutral case evaluation	<input type="checkbox"/> Other (specify): _____
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 11. How was case resolved?

a. <input type="checkbox"/> As a direct result of the ADR process.	c. <input type="checkbox"/> Resolution was unrelated to ADR process.
b. <input type="checkbox"/> As an indirect result of the ADR process.	
 12. Check the closest dollar amount that you estimate you saved (attorneys fees, expert witness fees, and other costs) by using this dispute resolution process compared to resolving this case through litigation, whether by settlement or trial.

<input type="checkbox"/> \$0	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	<input type="checkbox"/> \$750	<input type="checkbox"/> \$1,000	<input type="checkbox"/> more than \$1,000 (specify): \$ _____
------------------------------	--------------------------------	--------------------------------	--------------------------------	----------------------------------	--
 13. If the dispute resolution process caused a net increase in your costs in this case, check the closest dollar amount of the additional cost:

<input type="checkbox"/> \$0	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	<input type="checkbox"/> \$750	<input type="checkbox"/> \$1,000	<input type="checkbox"/> more than \$1,000 (specify): \$ _____
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 14. Check the closest number of court days that you estimate the court saved (motions, hearings, conferences, trial, etc.) as a result of this case being referred to this dispute resolution process:

<input type="checkbox"/> 0	<input type="checkbox"/> 1 day	<input type="checkbox"/> more than 1 day (specify): _____
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 15. If the dispute resolution process caused a net increase in court time for this case, check the closest number of additional court days:

<input type="checkbox"/> 0	<input type="checkbox"/> 1 day	<input type="checkbox"/> more than 1 day (specify): _____
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 16. Would you be willing to consider using this dispute resolution process again? ☐ Yes ☐ No

Form Adopted by the
Judicial Council of California
ADR-101 (new March 1, 1994)

ADR INFORMATION FORM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> EAST COUNTY DIVISION, RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	FOR COURT USE ONLY
PLAINTIFF(S)	ASSIGNED JUDGE
DEFENDANT(S)	DEPT
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	SUPERIOR COURT CASE NUMBER

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|--|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
- ☐ Other (specify e.g., private mini-trial, private judge, etc.): _____

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____ Date: _____

Name of Plaintiff _____ Name of Defendant _____

Signature _____ Signature _____

Name of Plaintiff's Attorney _____ Name of Defendant's Attorney _____

Signature _____ Signature _____

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Date: _____ Judge of the Superior Court

SDSC CIV-359 (Rev. 12/10)

**STIPULATION TO USE
ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Cal. Rules of Court, rule 3.1385

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

The Coca-Cola Company; Coca-Cola Refreshments USA, Inc.;
Coca-Cola Enterprises, Inc., and DOES T-100

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Gary Kilbourne, on behalf of himself and all others similarly situated,
and on behalf the general public

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/20/2014 at 10:51:45 AM

Clerk of the Superior Court
By Alicia Fletes, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos extras por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego
330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2014-00007465-CU-DE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William Turley, Esq./The Turley Law Firm, APLC, 625 Broadway, Suite 635, San Diego, CA 92101

DATE: 03/20/2014
(Fecha)

Clerk, by
(Secretario)

A. Fletes

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

Coca-Cola Refreshments USA, Inc.

- under:
- | | |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

- ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. July 1, 2009)

SUMMONS

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Code of Civil Procedure §§ 412.20, 486
www.courtinfo.ca.gov

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 San Diego, California 92101
 Telephone: (619) 234-2833
 Facsimile: (619) 234-4048

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego
03/20/2014 at 10:51:46 AM
 Clerk of the Superior Court
 By Alicia Flores, Deputy Clerk

Attorneys for Plaintiff GARY KILBOURNE
 on behalf of himself and all others similarly
 situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

GARY KILBOURNE, on behalf of
 himself and all others similarly situated,
 and on behalf of the general public

Plaintiff,

v.

THE COCA-COLA COMPANY; COCA-
 COLA REFRESHMENTS USA, INC.;
 COCA-COLA ENTERPRISES, INC.,

and DOES 1-100

Defendants.

Case No. 37-2014-00007465-CU-DE-CTL

**CLASS ACTION COMPLAINT FOR
 DAMAGES, INJUNCTIVE RELIEF,
 DECLARATORY RELIEF, AND
 RESTITUTION**

- 1) Wage Theft/Time Shaving
- 2) Failure to Pay Overtime
- 3) Failure to provide meal periods (Lab. Code §§ 226.7, 512; IWC Wage Order Nos. 9-1998, 9-2000, 9-2001 (11); Cal. Code Regs. Title 8, § 11090);
- 4) Failure to authorize and permit periods (Lab. Code § 226.7; IWC Wage Order Nos. 9-1998, 9-2000, 9-2001(12); Cal. Code Regs. Title 8, § 11090);
- 5) Knowing and intentional failure to comply with itemized employee wage statement provisions (Lab. Code §§ 226, 1174, 1175);
- 6) Conversion;
- 7) Fraud;
- 8) Unjust enrichment;
- 9) Waiting time penalties;
- 10) Violation of unfair competition law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

Plaintiff GARY KILBOURNE, on behalf of himself and all others similarly situated, and on behalf of the general public, complains of Defendants and/or DOES and for causes of action and alleges:

- 1 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of
2 Plaintiff GARY KILBOURNE and all employees, including but not limited to, hourly workers
3 not classified as "Exempt" or primarily employed in executive, professional, or administrative
4 capacities (hereinafter "Non-Exempt Employees") employed by, or formerly employed by,
5 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
6 COLA ENTERPRISES, INC.; and/or subsidiaries or affiliated companies and/or DOES,
7 within the State of California.
- 8 2. At all times mentioned herein, the common policies and practices of THE COCA-COLA
9 COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES,
10 INC. and/or DOES was a direct cause of Defendants' failure to comply with California's
11 wage and hours laws, Wage Orders, and/or the California Labor Code as set forth more fully
12 within.
- 13 3. For at least four years prior to the filing of this action and through to present, Defendants THE
14 COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
15 ENTERPRISES, INC. and/or DOES have had a consistent policy of requiring Non-Exempt
16 Employees within the State of California, including Plaintiff, to work through meal periods
17 and work at least five (5) hours without a meal period and failing to pay such employees one
18 (1) hour of pay at the employees' regular rate of compensation for each workday that the meal
19 period is not provided, or other compensation, as required by California's state wage and hour
20 laws and automatically deducting a half hours pay from their wages.
- 21 4. For at least four years prior to filing of this action and through the present, Defendants THE
22 COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
23 ENTERPRISES, INC. and/or DOES did not have a policy of allowing its hourly employees
24 working shifts of 10 or more hours in a day to take a second meal period of not less than thirty
25 minutes as required by the applicable Wage Order of the Industrial Welfare Commission.
- 26 5. For at least four years prior to the filing of this action and through to the present, Defendants
27 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
28 COLA ENTERPRISES, INC. and/or DOES have had a consistent policy of requiring Non-

1 Exempt Employees within the State of California, including Plaintiff, to work over ten (10)
2 hours without providing an additional, uninterrupted meal period of thirty minutes and failing
3 to pay such employees one (1) hour of pay at the employees' regular rate of compensation for
4 each workday that the meal period is not provided, or other compensation, as required by
5 California's state wage and hour laws.

6 6. For at least four years prior to the filing of this action and through to the present, Defendants
7 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
8 COLA ENTERPRISES, INC. and/or DOES have had a consistent policy of requiring Non-
9 Exempt Employees within the State of California, including Plaintiff, to work for over four
10 hours, or a major fraction thereof, without a 10 minute rest period and failing to pay such
11 employees one (1) hour of pay at the employees' regular rate of compensation for each
12 workday that the rest period is not provided, or other compensation, as required by California's
13 state wage and hour laws.

14 7. For at least four years prior to the filing of this action and through to the present, Defendants
15 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
16 COLA ENTERPRISES, INC. and/or DOES have had a continuous policy of "time shaving"
17 or not paying Plaintiff and those similarly situated for all their hours worked. Specifically,
18 Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
19 COCA-COLA ENTERPRISES, INC. and/or DOES have had a continuous and widespread
20 policy of "clocking-out" Plaintiff and those similarly situated for a thirty minute meal periods
21 (hereby referred to as "auto-meal deduct"), thereby deducting 30 minutes of paid time,
22 including straight time and overtime, even though Plaintiff and those similarly situated worked
23 through their meal periods, were not relieved of all duties, were not relinquished control over
24 their activities, were not permitted a reasonable opportunity to take an uninterrupted 30-
25 minute break and/or were impeded, discouraged and/or given an incentive to forego their meal
26 break.

27 8. For at least four years prior to filing this action and through to the present, Defendants THE
28 COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA

1 ENTERPRISES, INC. and/or DOES have knowingly and intentionally failed to comply with
2 the itemized employee wage statement provisions and have failed to pay Plaintiff and those
3 similarly situated compensation for said violations as required by California's state wage and
4 hour laws.

5 9. For at least four years prior to the filing of this action and through to the present, Defendants
6 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
7 COLA ENTERPRISES, INC. and/or DOES have wrongfully converted Plaintiff's and those
8 similarly situated Class members' wages and/or monies to their own use.

9 10. For at least four years prior to the filing of this action and through to the present, Defendants
10 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
11 COLA ENTERPRISES, INC. and/or DOES fraudulently represented to Plaintiff and those
12 similarly situated that all wages would be paid in order to induce Plaintiff and the Class he
13 seeks to represent into believing all wages would be paid and to induce Plaintiff and the Class
14 he seeks to represent to work for longer hours.

15 11. For at least four years prior to the filing of this action and through to the present, Defendants
16 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
17 COLA ENTERPRISES, INC. and/or DOES have been unjustly enriched by wrongfully and
18 unlawfully failing to pay Plaintiff and those similarly situated the wages they are owed.

19 12. For at least four years prior to the filing of this action and through to the present, Defendants
20 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
21 COLA ENTERPRISES, INC. and/or DOES and/or their officers and/or managing agents
22 willfully failed to pay, in a timely manner, wages owed to Plaintiff and members of the Class
23 who left Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS
24 USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES's employ or who were
25 terminated.

26 13. For at least four years prior to the filing of this action and through to the present, Defendants
27 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
28 COLA ENTERPRISES, INC. and/or DOES, by failing to lawfully pay Plaintiff and those

1 similarly situated all the wages they are owed, engaged in false, unfair, fraudulent and
2 deceptive business practices within the meaning of the Business and Professions Code section
3 17200, et seq.

4 14. Plaintiff GARY KILBOURNE, on behalf of himself and all Class Members, brings this action
5 pursuant to Labor Code sections 226, subdivision (b), 226.7, 510, 512, 558, 1194, and
6 California Code of Regulations, Title 8, section 11090, seeking unpaid wages and overtime,
7 unpaid rest and meal period compensation, penalties, injunctive and other equitable relief, and
8 reasonable attorneys' fees and costs.

9 15. Plaintiff GARY KILBOURNE, on behalf of himself and all Class Members, pursuant to
10 Business and Professions Code sections 17200-17208, also seeks injunctive relief, and
11 restitution, from Defendants THE COCA-COLA COMPANY; COCA-COLA
12 REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES for their
13 failure to pay straight time and overtime wages and rest and meal period compensation.

14 16. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
15 COCA-COLA ENTERPRISES, INC. and/or DOES own and operate trucks, industrial
16 trucks, industrial vehicles, and/or industrial work sites, and, at all times during the liability
17 period, have conducted business in SAN DIEGO County and elsewhere within California. At
18 these work sites and throughout California, Defendants THE COCA-COLA COMPANY;
19 COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or
20 DOES have, among other things, employed persons as truck workers, industrial truck workers,
21 industrial truck drivers, industrial vehicle drivers, and/or industrial workers.

22 17. THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
23 COLA ENTERPRISES, INC. and/or DOES' business is staffed, inter alia, by hourly Non-
24 Exempt Employees such as industrial truck workers, front office people, industrial vehicle
25 workers, and/or industrial workers and/or other hourly Non-Exempt Employees. THE COCA-
26 COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
27 ENTERPRISES, INC. and/or DOES' employees have not been paid during the liability
28

1 period all their straight time and overtime wages and rest and meal period compensation.
2 Plaintiff is informed and believes, and based thereon alleges, Defendants THE COCA-COLA
3 COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES,
4 INC. and/or DOES currently employ many employees in the State of California as Non-
5 Exempt Employees.

6 18. During the liability period, named Plaintiff and members of the Plaintiff Class were employed
7 by Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA,
8 INC.; COCA-COLA ENTERPRISES, INC. and/or DOES as Non-Exempt Employees and
9 were paid on an hourly basis. Plaintiff and the members of the Plaintiff Class of THE COCA-
10 COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
11 ENTERPRISES, INC. Non-Exempt Employees were not provided all straight time and
12 overtime wages owed and rest or meal periods or compensation in lieu thereof as mandated
13 under the California Labor Code, and the implementing rules and regulations of the Industrial
14 Welfare Commission's ("IWC") California Wage Orders.

15 19. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
16 COCA-COLA ENTERPRISES, INC. and/or DOES are and were aware that the THE COCA-
17 COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
18 ENTERPRISES, INC. Non-Exempt Employees were not paid all straight time and overtime
19 wages owed nor provided rest and meal periods. Defendants' and/or DOES' denial of wages
20 and other compensation due to Plaintiff and members of the Plaintiff Class in the position of
21 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
22 COLA ENTERPRISES, INC. Non-Exempt Employees was willful and deliberate.

23 20. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
24 COCA-COLA ENTERPRISES, INC. and/or DOES willfully failed to pay the straight time
25 and overtime wages owed and rest and meal period wages of former THE COCA-COLA
26 COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES,
27 INC. Non-Exempt Employees, including members of Plaintiff Class, when each such
28

employee quit or was discharged.

I. VENUE

21. Venue as to each Defendant THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES operate industrial facilities and employ hourly employees, conduct business, and commit Labor Code violations within SAN DIEGO County and California, and each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within SAN DIEGO County, Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES employ numerous Class Members in California and/or SAN DIEGO County.

II. PARTIES

A. Plaintiff.

22. Plaintiff GARY KILBOURNE is a resident of California, at all relevant times herein he was employed by Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES within the last four years as an industrial truck worker, industrial truck driver, industrial vehicle driver, and/or industrial worker in California. Mr. KILBOURNE was employed in a non-exempt capacity as an hourly industrial truck worker, industrial truck driver, industrial vehicle driver, and/or industrial worker.

23. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES' common company policies of failing to pay all straight time and overtime wages owed, auto-meal deduct, and providing no rest

1 periods and no meal periods to employees working at least five hours or any additional meal
 2 periods for working in excess of 10 hours, or compensation in lieu thereof. On information
 3 and belief, Defendants and/or DOES willfully failed to pay their employees and members of
 4 the Plaintiff Class in a timely manner compensation owing to them upon termination of their
 5 employment with THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA,
 6 INC.; COCA-COLA ENTERPRISES, INC. and/or DOES.

7 **B. Defendants.**

8
 9 24. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
 10 COCA-COLA ENTERPRISES, INC. and/or DOES are engaged in the ownership and
 11 operation of industrial vehicles and industrial work sites located within SAN DIEGO County,
 12 and throughout the State of California. During the liability period, Defendants THE COCA-
 13 COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
 14 ENTERPRISES, INC. and/or DOES employed Plaintiff and similarly situated persons as
 15 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
 16 COLA ENTERPRISES, INC. Non-Exempt Employees within California. On information
 17 and belief, each of the Defendants and/or DOES is conducting business in California.

18 25. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
 19 COCA-COLA ENTERPRISES, INC. and/or DOES are engaged in the ownership and
 20 operation of industrial vehicles and industrial work sites located within SAN DIEGO County,
 21 and throughout the State of California. During the liability period, Defendants and/or DOES
 22 employed Plaintiff and similarly situated persons as THE COCA-COLA COMPANY; COCA-
 23 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. Non-Exempt
 24 Employees within California.

25 26. THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
 26 COLA ENTERPRISES, INC. and/or DOES' principal place of business is in the State of
 27 California.

28 27. THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-

COLA ENTERPRISES, INC. and/or DOES have numerous offices and/or contracts in the State of California.

28. California is the nerve center of THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES operations.

29. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

30. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant and/or DOE are legally attributable to the other Defendants and/or DOES.

III. CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to represent a Class composed of and defined as follows:

All persons who are or have been employed by Defendants and/or DOES in the State of California as hourly employee industrial truck workers, truck drivers, drivers, hourly workers, or similar job designations and titles, during the period of the relevant statute of limitations.

1 Plaintiff also seeks to represent a Subclass composed of and defined as follows:

2 All persons who are or have been employed by Defendants and/or
3 DOES in the State of California as hourly employee industrial truck
4 workers, truck drivers, drivers, hourly workers or similar job
5 designations and titles, during the period of the relevant statute of
6 limitations, who were not paid all straight time wages and overtime.

7 All persons who are or have been employed by Defendants and/or
8 DOES in the State of California as hourly employee industrial truck
9 workers, drivers, hourly workers or similar job designations and titles, during
10 the period of the relevant statute of limitations, who were subject
11 to auto-meal deduct, when they were not relieved of all duties.
12

13 All persons who are or have been employed by Defendants and/or
14 DOES in the State of California as hourly employee industrial truck
15 workers, drivers, hourly workers or similar job designations and titles,
16 during the period of the relevant statute of limitations who have not
17 been authorized and permitted to take a rest period for every four
18 hours or major fraction thereof worked per day and were not provided
19 compensation of one hour's pay or other compensation for each day
20 on which such rest periods were not authorized and permitted.
21

22 All persons who are or have been employed by Defendants and/or
23 DOES in the State of California as hourly employee industrial truck
24 workers, drivers, hourly workers, or similar job designations and titles,
25 during the period of the relevant statute of limitations who have
26 worked five and/or ten hours without being provided a meal period
27 and/or additional meal period and were not provided compensation of
28 one hour's pay or other compensation for each day on which such

1 meal period was not provided.

2 All persons who are or have been employed by Defendants and/or
 3 DOES in the State of California as hourly employee, industrial truck
 4 workers, drivers or similar job designations and titles, during the
 5 period of the relevant statute of limitations who Defendants and/or
 6 DOES willfully failed to pay in a timely manner compensation owing
 7 to them upon termination of their employment with THE COCA-
 8 COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
 9 COCA-COLA ENTERPRISES, INC. and/or DOES.

10 Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to
 11 amend or modify the Class description with greater specificity or further division into
 12 subclasses or limitation to particular issues.

13
 14 32. This action has been brought and may properly be maintained as a class action under the
 15 provisions of section 382 of the California Code of Civil Procedure because there is a well-
 16 defined community of interest in the litigation and the proposed Class is easily ascertainable.

17 A. Numerosity.

18 33. The potential members of the Class as defined are so numerous that joinder of all the members
 19 of the Class is impracticable. While the precise number of Class Members has not been
 20 determined at this time, Plaintiff is informed and believes that Defendants and/or DOES
 21 currently employ, and during the relevant time periods employed, thousands of employees, all
 22 in the State of California, in positions as Defendants' and/or DOES' Non-Exempt Employees
 23 in SAN DIEGO County and dispersed throughout California during the liability period and
 24 who are or have been affected by Defendants' and/or DOES' policies of shaving time, failing
 25 to pay all straight time and overtime wages, not providing meal periods or providing them
 26 more than five hours into an employee's shift, not authorizing and permitting rest periods
 27 without the appropriate legal compensation and not timely paying waiting time monies.

28 34. Accounting for employee turnover during the relevant periods necessarily increases this

number substantially. Upon information and belief, Plaintiff alleges Defendants' and/or DOES' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

35. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- (1) Whether Defendants and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11090, by failing to authorize, permit, and/or provide rest periods to employees for every four hours or major fraction thereof worked and/or failing to pay said employees one hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.
- (2) Whether Defendants and/or DOES violated Labor Code sections 226.7 and 512, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11090, by failing to provide meal periods to Non-Exempt Employees per every (5) hours of continuous work and/or failing to pay said employees one hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.
- (3) Whether Defendants and/or DOES violated Labor Code sections 226.7 and 512, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11090, by not relieving Non-Exempt Employees from all duties during a 30 minute meal period and not counting the time as time worked.
- (4) Whether Defendants' and/or DOES' uniform policies of establishing and

1 scheduling routes to be completed in overly demanding time frames resulted
2 in Defendant and/or DOES not providing meal and rest periods, in that said
3 policies pressured its Non-Exempt hourly industrial truck workers to complete
4 their routes within the rigorous time frames and not break route to take meal
5 and rest periods and/or not legally provide meal periods.

- 6 (5) Whether Defendants and/or DOES had a pattern and practice of pressuring its
7 hourly Non-Exempt industrial truck workers to complete routes within time
8 frames that made it impractical for THE COCA-COLA COMPANY; COCA-
9 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

10 Non-Exempt drivers to be relieved of all duty for 30 minute meal periods
11 and/or 10 minute rest periods.

- 12 (6) Whether the in existence of a policy allowing a second meal period in shifts
13 of over five (5) hours resulted in THE COCA-COLA COMPANY; COCA-
14 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

15 Non-Exempt industrial truck workers not being provided a second meal
16 period in accordance with the Labor Code and Wage Orders.

- 17 (7) Whether the in existence of a policy allowing a third rest period in shifts of
18 over ten (10) hours resulted in THE COCA-COLA COMPANY; COCA-
19 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

20 Non-Exempt industrial truck workers not being authorized and permitted to
21 take a rest period in shifts of over ten (10) hours in accordance with the Labor
22 Code and Wage Orders.

- 23 (8) Whether Defendant's and/or DOES' uniform policy of automatically
24 deducting thirty (30) minutes from its Non-Exempt industrial truck workers
25 for each day worked - regardless of whether the Non-Exempt industrial truck
26 workers were relieved of duty for thirty (30) minutes - violated the Labor
27 Code and Wage Orders.
28

- (9) Whether Defendants and/or DOES violated section 226 of the Labor Code and IWC Wage Order No. 9-2001 subsections (7)(a), (7)(b); (7)(c) by knowingly and intentionally failing to, among other violations, accurately report compensation owed for rest and meal period violations.
- (10) Whether Defendants and/or DOES wrongly converted Plaintiff's and Class members' wages and/or monies to their own use.
- (11) Whether Defendants and/or DOES fraudulently represented to Plaintiff and those similarly situated that all wages would be paid in order to induce Plaintiff and the Class he seeks to represent into believing all wages would be paid and to induce Plaintiff and the Class he seeks to represent to work for longer hours.
- (12) Whether Defendants and/or DOES have been unjustly enriched by wrongfully and unlawfully failing to pay Plaintiff and those similarly situated wages they are owed.
- (13) Whether Defendants and/or DOES willfully failed to pay, in a timely manner, wages owed to members of the Class who left Defendants' and/or DOES' employ or who were terminated.
- (14) Whether Defendants and/or DOES violated section 17200, et seq. of the California Business and Professions Code by shaving time, failing to pay all wages and overtime, and failing to provide rest and meal periods without compensating Non-Exempt Employees one hour's pay for every day such periods were not provided, and failing to keep accurate records of Class Members' compensation owed.
- (15) Whether Defendants and/or DOES violated Labor Code sections 510, 1194, and other provisions by shaving time and failing to pay all straight time and overtime wages owed.

1 (16) Whether Defendants and/or DOES violated Labor Code Labor Code Section
2 203 which provides for the assessment of a penalty against the employer when
3 there is a willful failure to pay wages due the employee at conclusion of the
4 employment relationship.

5 (17) Whether Defendants and/or DOES policy of deducting a half hours pay
6 regardless of whether the employee was actually provided a legally compliant
7 meal period is illegal.

8 C. Typicality.

9
10 36. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all
11 members of the Class sustained injuries and damages arising out of and caused by Defendants'
12 and/or DOES' common course of conduct in violation of laws and regulations that have the
13 force and effect of law and statutes as alleged.

14 D. Adequacy of Representation.

15 37. Plaintiff will fairly and adequately represent and protect the interests of the members of the
16 Class. Counsel who represents Plaintiff are competent and experienced in litigating large
17 employment class actions.

18 E. Superiority of Class Action.

19 38. A class action is superior to other available means for the fair and efficient adjudication of this
20 controversy. Individual joinder of all Class Members is not practicable, and questions of law
21 and fact common to the Class predominate over any questions affecting only individual
22 members of the Class. Each member of the Class has been damaged and is entitled to
23 recovery by reason of Defendants' and/or DOES' illegal policy and/or practice of failing to
24 pay all straight time and overtime wages owed, not providing meal periods, denying Class
25 Members proper rest and meal periods without legal compensation, requiring employees to
26 work in excess of ten hours per day without additional meal periods, and not compensating
27 members of the Class for all time worked.
28

39. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

IV. CAUSES OF ACTION.

First cause of action against all Defendants and/or DOES: Wage-Theft/ Time-Shaving.

40. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

41. Defendants and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked. Specifically, Defendants and/or DOES have a continuous policy of clocking-out Plaintiffs and those similarly situated out for a thirty minute meal period, even though Plaintiffs and all members of the Class work through their meal periods.

42. Thus, Defendants and/or DOES shave/ steal earned wages from Plaintiff and each and every member of the Class each and every day they work without a meal period and have time deducted.

43. Plaintiff and those similarly situated Class members are informed and believe and thereon allege that Defendants and/or DOES breached the legal duty to pay full wages to Plaintiffs by automatically deducting a portion of the wages earned when Plaintiff's and the Class members' actual time records indicated that a meal period was not taken. Defendants and/or DOES devised an auto-meal deduct practice, manual method, electronic system, payroll system and/or a computer program to edit the actual hours reported by Plaintiff and the Class members, deducting a portion of the hours shown as worked hours when a meal period and/or rest period was not taken during the work day and/or Plaintiff and the Class members were not relieved of all duties. Defendants and/or DOES did not make reasonable efforts to determine whether the time deducted was actually worked as reported by Plaintiff and the Class members. Defendants and/or DOES, without a reasonable basis, presumed that actual reported

hours had not been accurately reported. The conduct complained of is a form of what is sometimes called "dinging," "shaving," or "scrubbing" and is prohibited by law. Defendants and/or DOES also failed to pay for the overtime that was due pursuant to Labor Code sections 510 and 1194 and Industrial Welfare Commission Order No. 9-2001, item 3(A).

44. Plaintiff and the Class members are informed and believe and thereon allege that as a direct result of the systematic deductions in pay, resulting from application of an automatic computer program and overtime, Plaintiff and the Class members have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants and/or DOES to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial. Defendants and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention on injuring Plaintiff and the Class members. Defendants and/or DOES acted with malice or in conscious disregard of Plaintiff's and the Class members' rights. Plaintiff and the Class members are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at time of trial. Plaintiffs are also entitled to any penalties allowed by law.

45. As a direct result of Defendants' and/or DOES' policy of illegal time shaving/ wage theft, Plaintiffs and those similarly situated have been damaged in an amount to be proven at trial.

Second cause of action against all Defendants and/or DOES: Failure to pay overtime

46. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

47. It is fundamental that an employer must pay its employees for the time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding on part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section 1197 prohibits the payment of less than the minimum wage. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or

1 federal law or when the deduction is expressly authorized in writing by the employee for
2 specified purposes that do not have the effect of reducing the agreed upon wage.

3 48. Defendants failed to pay overtime when employees worked over 8 hours a day and when
4 employees worked over 40 hours a week.

5 49. Plaintiff and those similarly situated Class members were employed by THE COCA-COLA
6 COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES,
7 INC. and/or DOES at all relevant times. Defendants and/or DOES were required to
8 compensate Plaintiffs for all hours worked and were prohibited from making deductions that
9 had the effect of reducing the agreed upon wage.

10 50. Plaintiff and those similarly situated Class members are informed and believe and thereon
11 allege that Defendants and/or DOES breached the legal duty to pay full wages to Plaintiffs by
12 automatically deducting a portion of the wages earned when Plaintiff's and the Class
13 members' actual time records indicated that a meal period was not taken. Defendants and/or
14 DOES devised a computer program to edit the actual hours reported by Plaintiff and the Class
15 members, deducting a portion of the hours shown as worked hours when a meal period and/or
16 rest period was not taken during the work day. Defendants and/or DOES did not make
17 reasonable efforts to determine whether the time deducted was actually worked as reported by
18 Plaintiff and the Class members. Defendants and/or DOES, without a reasonable basis,
19 presumed that actual reported hours had not been accurately reported. The conduct
20 complained of is a form of what is sometimes called "dinging" and is prohibited by law.
21 Defendants and/or DOES also failed to pay for the overtime that was due pursuant to Industrial
22 Welfare Commission Order No. 9-2001, item 3(A).

23 51. Plaintiff and the Class members are informed and believe and thereon allege that as a direct
24 result of the systematic deductions in pay, resulting from application of an automatic computer
25 program and overtime, Plaintiff and the Class members have suffered, and continue to suffer,
26 substantial unpaid wages, and lost interest on such wages, and expenses and attorneys' fees
27 in seeking to compel Defendants and/or DOES to fully perform their obligations under state
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1 law, all to their respective damage in amounts according to proof at time of trial. Defendants
 2 and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful
 3 and deliberate intention on injuring Plaintiff and the Class members. Defendants and/or
 4 DOES acted with malice or in conscious disregard of Plaintiff's and the Class members'
 5 rights. In addition to compensation, Plaintiffs are also entitled to any penalties allowed by law.

6 **Third cause of action against all Defendants and/or DOES: Failure to provide meal periods or**
 7 **pay compensation in lieu thereof. (Lab. Code §§ 226.7, 512; IWC Wage Order No. 9; Cal. Code**
 8 **Regs., Title 8, § 11090).**

9 52. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
 10 every other paragraph in this Complaint herein as if fully plead.

11 53. Under California Labor Code, section 512, and Industrial Welfare Commission Wage Order
 12 No.9, no employer shall employ any person for a work period of more than five (5) hours
 13 without providing a meal period of not less than thirty (30) minutes. During this meal period
 14 of not less than thirty (30) minutes, the employee is to be completely free of the employer's
 15 control and must not perform any work for the employer. If the employee does perform work
 16 for the employer during the thirty (30) minute meal period, the employee has not been
 17 provided a meal period in accordance with the law. Also, the employee is to be compensated
 18 for any work performed during the thirty (30) minute meal period.

19 54. In addition, an employer may not employ an employee for a work period of more than ten (10)
 20 hours per day without providing the employee with another meal period of not less than thirty
 21 (30) minutes.

22 55. Under California Labor Code, section 226.7, if the employer does not provide an employee
 23 a meal period in accordance with the above requirements, the employer shall pay the employee
 24 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
 25 meal period is not provided.

26 56. Defendants and/or DOES failed to provide 30 minute, uninterrupted meal periods to its Non-
 27 Exempt Employees who worked for work periods of more than five consecutive hours. As
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1 such, Defendants' and/or DOES' Non-Exempt Employees were required to work well over
2 five consecutive hours at a time without being provided a 30 minute, uninterrupted meal
3 period within that time.

4 57. Defendants and/or DOES failed to provide 30 minute, uninterrupted meal periods to its Non-
5 Exempt Employees for every five continuous hours its Non-Exempt Employees worked.

6 58. Defendants' and/or DOES' business model was such that Non-Exempt Employees were
7 assigned too much work that could not be reasonably completed in their assigned shift, work
8 and/or route. The end result is that Defendants' and/or DOES' Non-Exempt Employees
9 routinely and regularly are forced to eat their meals while driving and/or while working their
10 routes.

11 59. Throughout the statutory period, Defendants and/or DOES had a pattern and practice of
12 assigning too much work to be completed in too short of time frames, which resulted in
13 Plaintiff and those similarly situated not breaking route to take meal and rest periods.

14 60. Throughout the statutory period, Defendants and/or DOES valued productivity over providing
15 meal and rest periods and, because of this, meal and rest periods were not priorities to
16 Defendants and/or DOES.

17 61. Throughout the statutory period, Defendants' and/or DOES' policies promoting productivity
18 subjugated Plaintiff's and those similarly situated's rights to meal and rest periods.

19 62. Because of Defendants' and/or DOES' demanding policies on route completion times,
20 Plaintiff and those similarly situated felt that breaking route to exercise their rights to take
21 meal or rest periods would sacrifice their jobs with THE COCA-COLA COMPANY; COCA-
22 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

23 63. Based on Defendants' and/or DOES' demanding route completion time policies, Plaintiff and
24 those similarly situated routinely worked through their meal periods, which compromised the
25 health and welfare of, not only the Plaintiff and those similarly situated, but all members of
26 the general public.
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1 64. Throughout the statutory period, Defendants and/or DOES had no policy that advised Plaintiff
2 and those similarly situated of their right to take a second meal period.

3 65. Defendants and/or DOES thereby failed to provide an additional 30 minute uninterrupted meal
4 period for employees on days where they worked in excess of ten hours.

5 66. Failing to provide compensation for such unprovided or improperly provided meal periods,
6 as alleged above, Defendants and/or DOES willfully violated the provisions of Labor Code
7 sections 226.7, 512 and IWC Wage Order No. 9.

8
9 67. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Class he seeks
10 to represent have been deprived of premium wages in amounts to be determined at trial, and
11 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
12 and costs, under Labor Code sections 226, 226.7, and IWC Wage Order Nos. 9-1998, 9-2000,
13 and 9-2001. Plaintiff and the Class Members he seeks to represent did not willfully waive
14 their right to take meal periods through mutual consent with Defendants and/or DOES.

15 68. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

16 **Fourth cause of action against all Defendants and/or DOES: Failure to authorize and permit rest**
17 **periods or pay compensation in lieu thereof (Lab. Code § 226.7; IWC Wage Order No. 9; Cal.**
18 **Code Regs., Title 8, § 11090).**

19 69. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
20 every other paragraph in this Complaint herein as if fully plead.

21 70. Defendants and/or DOES failed to authorize and permit its Non-Exempt Employees to take
22 10 minute rest periods per every four hours worked or major fraction thereof.

23 71. Defendants' and/or DOES' business model was such that Non-Exempt Employees were
24 assigned too much work that could not be reasonably completed in their assigned shift, work
25 and/or route. The end result is that Defendants' and/or DOES' Non-Exempt Employees
26 routinely and regularly are forced to work through their rest periods.

27 72. Throughout the statutory period, Defendants and/or DOES had a pattern and practice of
28

- 1 assigning too much work to be completed in too short of time frames, which resulted in
2 Plaintiff and those similarly situated not breaking route to take meal and rest periods.
- 3 73. Throughout the statutory period, Defendants and/or DOES valued productivity over providing
4 meal and rest periods and, because of this, meal and rest periods were not priorities to
5 Defendants and/or DOES.
- 6 74. Throughout the statutory period, Defendants' and/or DOES' policies promoting productivity
7 subjugated Plaintiff's and those similarly situated's rights to meal and rest periods.
- 8 75. Because of Defendants' and/or DOES' demanding policies on route completion times,
9 Plaintiff and those similarly situated felt that breaking route to exercise their rights to take
10 meal or rest periods would sacrifice their jobs with THE COCA-COLA COMPANY; COCA-
11 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.
- 12 76. Based on Defendants' and/or DOES' demanding route policies, Plaintiff and those similarly
13 situated routinely worked through their rest periods, which compromised the health and
14 welfare of, not only the Plaintiff and those similarly situated, but all members of the general
15 public.
- 16 77. Throughout the statutory period, Defendants and/or DOES had no policy that advised Plaintiff
17 and those similarly situated of their right to take an additional rest period in shifts exceeding
18 10 hours in a day.
- 19 78. Thus, Plaintiff and those similarly situated had no way of knowing they were to be authorized
20 and permitted a ten minute rest period when working in excess of 10 hours a day.
- 21 79. By its failure to authorize and permit its Non-Exempt Employees to take rest periods for every
22 four hours or major fraction thereof worked per day, Defendants and/or DOES willfully
23 violated provisions of Labor Code section 226.7 and IWC Wage Order Nos. 9-1998, 9-2000,
24 and 9-2001. Plaintiff and the Class Members he seeks to represent did not willfully waive
25 their right to take rest periods through mutual consent with Defendants and/or DOES.
- 26 80. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Class he seeks
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1 to represent have been deprived of premium wages in amounts to be determined at trial, and
 2 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
 3 and costs, under Labor Code sections 226, 226.7, and IWC Wage Orders 9-1998, 9-2000, 9-
 4 2001.

5 81. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below
 6 **Fifth cause of action against all Defendants and/or DOES: Knowing and intentional failure to**
 7 **comply with itemized employee wage statement provisions (Lab. Code §§ 226, 1174, 1175; IWC**
 8 **Wage Order No. 9; Cal. Code Regs., Title 8, § 11090).**
 9

10 82. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
 11 every other paragraph in this Complaint herein as if fully plead.

12 83. Section 226, subdivision (a), of the California Labor Code requires Defendants and/or DOES
 13 to itemize in wage statements all deductions from payment of wages and to accurately report
 14 total hours worked by Plaintiff and the members of the proposed Class. Defendants and/or
 15 DOES have knowingly and intentionally failed to comply with Labor Code section 226,
 16 subdivision (a), on each and every wage statement provided to Plaintiff and members of the
 17 proposed Class.

18 84. Section 1174 of the California Labor Code requires Defendants and/or DOES to maintain and
 19 preserve, in a centralized location, records showing the hours worked daily by and the wages
 20 paid to its employees. Defendants and/or DOES have knowingly and intentionally failed to
 21 comply with Labor Code section 1174. The failure of Defendants and/or DOES, and each of
 22 them, to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section
 23 1175.

24 85. Defendants and/or DOES failed to maintain time records - as required by IWC Wage Order
 25 Nos. 9-2001(7), 9-2000(7) and 9-1998(7) - showing, among other things, when the employee
 26 begins and ends each work period, meal period, and total daily hours worked in itemized wage
 27 statements, and all deductions from payment of wages, and to accurately report total hours
 28 worked by Plaintiff and the members of the proposed Class.

1 86. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

2 **Sixth cause of action against all Defendants and/or DOES: Conversion.**

3 87. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
4 every other paragraph in this Complaint herein as if fully plead.

5
6 88. At all times mentioned herein, Plaintiff and the Class he seeks to represent had an ownership
7 interest in the wages owed for Defendants' and/or DOES' failure to comply with the laws
8 respecting meal and rest periods.

9 89. Defendants and/or DOES never paid Plaintiff and the Class he seeks to represent the wages
10 owed for Defendants' and/or DOES' failure to comply with the laws respecting meal and rest
11 periods.

12 90. At all times mentioned herein, Plaintiff and the Class he seeks to represent, never consented
13 to Defendants and/or DOES taking said wages owed to Plaintiff and the Class he seeks to
14 represent.

15 91. At all times mentioned herein, Plaintiff and the Class he seeks to represent, were harmed by
16 Defendants' and/or DOES' failure to pay wages owed to Plaintiff and the Class he seeks to
17 represent.

18 92. At all times mentioned herein, Defendants and DOES and each of them wrongfully converted
19 such wages and/or monies to their own use.

20 93. At all times mentioned herein, Defendants' and DOES' policies and practices resulted in the
21 conversion of Plaintiff's wages and those similarly situated.

22 94. Such conversion was wrongful because such wages belonged to the employees.

23 95. At all times mentioned herein, Defendants and/or DOES fully realized what they were doing.
24 They fully realized that they were stealing money from Plaintiff and those similarly situated.

25 96. Defendant and/or DOES fully realized that Plaintiffs and those similarly situated were
26 unsophisticated and not likely to appreciate, understand and/or comprehend that Defendants
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- 1 and/or DOES were wrongfully converting, taking and/or stealing their wages.
- 2 97. At all times mentioned herein, Defendants and/or DOES fully realized that Plaintiffs and those
- 3 similarly situated were in a relatively disadvantaged situation. Defendants and/or DOES
- 4 preyed on Plaintiff and those similarly situated because Plaintiff and those similarly situated
- 5 were economically disadvantaged.
- 6 98. At all times mentioned herein, said violations were conscious, deliberate, intentional and/or
- 7 malicious.
- 8 99. At all times mentioned herein, said conversion was conscious, deliberate, intentional and/or
- 9 malicious.
- 10
- 11 100. At all times mentioned herein, Defendants and/or DOES and/or persons acting on their behalf
- 12 knew that they could take advantage of these workers' rights because they know they could
- 13 prey on the relative un-sophistication of the workers.
- 14 101. Plaintiff and most of the Class he proposes to represent are not well educated, have little
- 15 sophistication with the law - including the California Labor Code.
- 16 102. At all times mentioned herein, the acts, omissions and/or conduct on the part of Defendants
- 17 and/or DOES and/or persons acting on their behalf was downright malice.
- 18 103. At all times mentioned herein, Defendants and/or DOES and/or persons acting on their behalf
- 19 fully realized that they were stealing the money from innocent and relatively helpless workers.
- 20
- 21 104. As a direct result of Defendants and/or DOES conversion; Plaintiff and those similarly situated
- 22 were damaged in an amount to be proven at time of trial.
- 23 105. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.
- 24 **Seventh cause of action against all Defendants and/or DOES: Fraud.**
- 25 106. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
- 26 every other paragraph in this Complaint herein as if fully plead.
- 27
- 28 107. At all times mentioned herein, Defendant and/or DOES had a pattern and practice of

1 fraudulently altering Plaintiff's and other similarly situated employees' time records and/or
2 wage records in order for Defendants and/or DOES to not have to pay the wages to Plaintiff
3 and those similarly situated.

4 108. Defendant and/or DOES promised Plaintiff and the Class he seeks to represent to pay Plaintiff
5 and the Class he seeks to represent all wages earned, which includes, but is not limited to,
6 wages earned from not being provided meal periods in accordance with the applicable
7 California law and wages earned from not being authorized and permitted to take rest periods
8 in accordance with the applicable California law.

9 109. At all times mentioned herein, Defendants and/or DOES knew that they would deprive
10 Plaintiff and the Class he seeks to represent wages owed for unprovided meal periods and non-
11 authorized and permitted rest periods.

12 110. At all times mentioned herein, Defendants and/or DOES falsely promised Plaintiff and the
13 Class he seeks to represent that all wages would be paid in order to induce Plaintiff and the
14 Class he seeks to represent into believing all wages would be paid and to induce Plaintiff and
15 the Class he seeks to represent to work for longer hours.

16 111. At all times mentioned herein, Plaintiff and the Class he seeks to represent justifiably relied
17 on Defendants' and/or DOES' promises that all wages would be paid.

18 112. As a result of this justifiable reliance on Defendants' and/or DOES' fraudulent promises,
19 Plaintiff and the Class worked through meal periods and rest periods and suffered damages
20 and/or lost wages in an amount to be proven at the time of trial in not being properly
21 compensated.

22 113. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

23 **Eighth cause of action against all Defendants and/or DOES: Unjust enrichment.**

24 114. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
25 every other paragraph in this Complaint herein as if fully plead.

26 115. At all times mentioned herein, there was an unjust benefit to Defendants and/or DOES due to
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- 1 Defendants' and/or DOES' actions in wrongfully and unlawfully failing to pay Plaintiff and
2 the Class he seeks to represent wages owed.
- 3 116. At all times mentioned herein, Defendants and/or DOES were under a duty to follow the wage
4 and hour laws in regards to Defendants' and/or DOES' California employees.
- 5 117. At all times mentioned herein, Defendants and/or DOES wrongfully invaded the rights of
6 Plaintiff and others similarly situated.
- 7 118. At all times mentioned herein, there was an unjust retention of Plaintiff's and others similarly
8 situated's wages.
- 9 119. At all times mentioned herein, Defendants and/or DOES were in receipt of wages and/or
10 monies which belonged to Plaintiff and those similarly situated.
- 11 120. At all times mentioned herein, Defendants and/or DOES breached their duty to follow
12 California's wage and hour laws in regards to their California employees.
- 13 121. At all times mentioned herein, said unjust enrichment was conscious, deliberate, intentional
14 and/or malicious.
- 15 122. As a direct result of Defendants' and/or DOES' breach of California's wage and hour laws;
16 Plaintiff and those similarly situated suffered damage.
- 17 123. As a direct result of Defendants' and/or DOES' unjust conversion; Plaintiffs and those
18 similarly situated were damaged in an amount to be proven at time of trial.
- 19 124. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.
- 20
- 21 **Ninth cause of action against all Defendants and/or DOES: Waiting time penalties under Labor**
22 **Code section 203.**
- 23
- 24 125. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
25 every other paragraph in this Complaint herein as if fully plead.
- 26 126. Numerous members of the Class are no longer employed by Defendants and/or DOES. They
27 were either fired or quit Defendants' and/or DOES' employ. Defendants and/or DOES did not
28

1 pay all timely wages owed, straight-time wages owed, overtime wages owed, meal period
2 premiums, and/or rest period premiums owed at the time of termination.

3 127. The Defendants' and/or DOES' failure to pay wages, as alleged above, was willful in that
4 Defendants and/or DOES and each of them knew the wages to be due but failed to pay them,
5 thus entitling members of the Class to penalties under Labor Code, section 203, which
6 provides that an employee's wages shall continue as a penalty until paid for a period of up to
7 thirty (30) days from the time they were due.

8 128. Defendants and/or DOES have failed to pay Plaintiff and those similarly situated Class
9 members a sum certain at the time of termination or within seventy-two (72) hours of their
10 resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the
11 provisions of Labor Code, section 203, Plaintiff and the Class are entitled to a penalty in the
12 amount of Plaintiff's and those similarly situated Class Members' daily wage multiplied by
13 thirty (30) days.

14 129. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.
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18 **Tenth cause of action against all Defendants and/or DOES: Violation of unfair competition law**
19 **(California Bus. & Prof. Code, § 17200, et seq.)**

20 130. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
21 every other paragraph in this Complaint herein as if fully plead.
22

23 131. Defendants' and/or DOES' failure to pay all straight time and overtime wages owed, Labor
24 Code 203 wages, and failure to compensate for unprovided or improperly provided rest and
25 meal periods to Plaintiff and members of the Plaintiff Class, under the IWC Wage Orders and
26 under the California Labor Code, and failure to keep proper records, as alleged herein,
27 constitutes unlawful activity prohibited by California Business and Professions Code section
28 17200, et seq.

- 1 132. The actions of Defendants and/or DOES in failing to pay Plaintiff and members of the Plaintiff
2 Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive
3 business practices, within the meaning of California Business and Professions Code section
4 17200, et seq.
- 5 133. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices
6 in order to prevent future damage, for which there is no adequate remedy at law, and to avoid
7 a multiplicity of lawsuits. Plaintiff brings this cause individually and as a member of the
8 general public actually harmed and as a representative of all others subject to Defendants'
9 and/or DOES' unlawful acts and practices.
- 10 134. As a result of their unlawful acts, Defendants and/or DOES have reaped and continue to reap
11 unfair benefits at the expense of Plaintiff and the Class he seeks to represent. Defendants
12 and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains
13 and restore Plaintiff and the members of the Plaintiff Class the wrongfully withheld wages and
14 overtime compensation pursuant to Business and Professions Code section 17203. Plaintiff
15 is informed and believes, and thereon alleges, that Defendants and/or DOES are unjustly
16 enriched through their failure to provide meal periods, authorize and permit rest periods,
17 and/or appropriate compensation in lieu of meal and rest periods to Plaintiff and members of
18 the Plaintiff Class.
- 19 135. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
20 Plaintiff Class are prejudiced by Defendants' and/or DOES' unfair trade practices.
- 21 136. As a direct and proximate result of the unfair business practices of Defendants and/or DOES,
22 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is
23 entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all
24 wages and premium pay which have been unlawfully withheld from Plaintiff and members of
25 the Plaintiff Class as a result of the business acts and practices described herein and enjoining
26 Defendants and/or DOES from engaging in the practices described herein.
- 27 137. The illegal conduct alleged herein is continuing, and there is no indication that Defendants
28

1 and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if
 2 Defendants and/or DOES are not enjoined from the conduct set forth in this Complaint, they
 3 will continue to require employees to work through meal and/or second meal periods and/or
 4 work five hours or more without receiving a meal period, will continue to fail to authorize and
 5 permit rest periods or provide appropriate compensation in lieu thereof, and will continue to
 6 fail to pay and to avoid paying wages, appropriate taxes, insurance, and unemployment
 7 withholdings.

8 138. Plaintiff further requests that the Court issue a preliminary and permanent injunction
 9 prohibiting Defendants and/or DOES from requiring Plaintiff and the Plaintiff Class to work
 10 through meal periods, and from continuing to fail to provide rest periods and meal periods or
 11 provide appropriate compensation in lieu thereof.

12 139. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.
 13

14 **V. PRAYER FOR RELIEF.**

- 15 1. That the Court determine that this action may be maintained as a Class action;
- 16 2. For compensatory damages in an amount according to proof with interest thereon;
- 17 3. For unpaid wages in an amount according to proof with interest at time of trial;
- 18 4. For all monies for the violations of California Labor Code section 226.7;
- 19 5. For economic and/or special damages in an amount according to proof with interest
 20 thereon;
- 21 6. For all waiting time penalties owed;
- 22 7. That Defendants and/or DOES be found to have engaged in unfair competition in
 23 violation of section 17200, et seq. of the California Business and Professions Code;
- 24 8. That Defendants and/or DOES be ordered and enjoined to make restitution to
 25 Plaintiff and the Class due to their unfair competition,, pursuant to California
 26 Business and Professions Code sections 17203 and 17204;
- 27 9. That Defendants and/or DOES be enjoined from continuing the illegal course of
 28

conduct alleged herein;

10. That Defendants and/or DOES further be enjoined to cease and desist from unfair competition in violation of section 17200, et seq. of the California Business and Professions Code;

11. That Defendants and/or DOES be enjoined from further acts of restraint of trade and unfair competition;

12. For attorneys' fees;

13. For interest accrued to date;

14. For costs of suit and expenses incurred herein; and

15. For such other and further relief as the Court deems just and proper.

Dated: March 19, 2014

THE TURLEY LAW FIRM



William Turley, Esq.

David Mara, Esq.

Representing Plaintiff GARY KILBOURNE
on behalf of himself and all others similarly
situated, and on behalf of the general public

F:\ACLIENTS\Class Actions\Coca-Cola\Pleadings\complaint.001.wpd

EXHIBIT B



**Service of Process
Transmittal**

03/24/2014

CT Log Number 524640586

TO: Russell S. Bonds
The Coca-Cola Company
One Coca-Cola Plaza
Atlanta, GA 30313-

RE: Process Served in California

FOR: The Coca-Cola Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Gary Kilbourne, etc., Pltf. vs. The Coca-Cola Company, et al., Dfts.
DOCUMENT(S) SERVED: Summons, Class Action Complaint(s), Cover Sheet(s), Notice(s)
COURT/AGENCY: San Diego County Superior Court, CA
Case # 37201400007465CUOECTL
NATURE OF ACTION: Employee Litigation - Unpaid Wages (see documents for additional information)
ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE: By Process Server on 03/24/2014 at 14:15
JURISDICTION SERVED : California
APPEARANCE OR ANSWER DUE: Earliest Answer Date - 30 days after this summons and legal papers are served on you (Document(s) may contain additional answer dates)
ATTORNEY(S) / SENDER(S): William Turley
The Turley Law Firm, APLC
625 Broadway
Suite 635
San Diego, CA 92101
619-234-2833
ACTION ITEMS: CT has retained the current log, Retain Date: 03/25/2014, Expected Purge Date: 03/30/2014
Image SOP
Email Notification, Nancy Quattrocchi nquattrocchi@na.ko.com
Email Notification, Russell S. Bonds rbonds@coca-cola.com
SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

Page 1 of 1 / RR

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

**EXHIBIT B
Page 41**

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William Turley, Esq. (SBN 122408); David Mara, Esq. (SBN 230498) The Turley Law Firm, APLC 625 Broadway, Suite 635 San Diego, CA 92101 TELEPHONE NO.: (619) 234-2833 FAX NO.: (619) 234-4048 ATTORNEY FOR (Name): Plaintiffs Ronald Young		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/20/2014 at 10:51:45 AM Clerk of the Superior Court By Alicia Fletes, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
CASE NAME: Gary Kilbourne v The Coca-Cola Company, et al., and DOES 1-100		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: 37-2014-00007465-CU-0E-CTL JUDGE: Judge Timothy Taylor DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 19 2014

William Turley, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 1 of 2
 Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties In Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties In Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i> Other P/VPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other P/VPD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other P/VPD/WD Non-P/VPD/WD (Other) Tort Business Tort/Unfair Business Practices (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-P/VPD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i> Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex) Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
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CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 2 of 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7072	
PLAINTIFF(S) / PETITIONER(S): Gary Kilbourne	
DEFENDANT(S) / RESPONDENT(S): The Coca-Cola Company et.al.	
GARY KILBOURNE VS THE COCA-COLA COMPANY [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2014-00007465-CU-OE-CTL

CASE ASSIGNMENT

Judge: Timothy Taylor

Department: C-72

COMPLAINT/PETITION FILED: 03/20/2014

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	08/22/2014	09:15 am	C-72	Timothy Taylor

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 010313 at www.sdcourt.ca.gov for guidelines and procedures.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

**ALTERNATIVE DISPUTE RESOLUTION
IN CIVIL CASES**



Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

NAME OF COURT: _____

ADR Information Form

This form should be filled out and returned,
within 10 days of the resolution of the dispute, to:



1. Case name: _____ No. _____
 2. Type of civil case: ☐ PI/PD-Auto ☐ PI/PD-Other ☐ Contract ☐ Other (specify): _____
 3. Date complaint filed _____ Date case resolved _____
 4. Date of ADR conference _____ 5. Number of parties _____
 6. Amount in controversy ☐ \$0-\$25,000 ☐ \$25,000-\$50,000 ☐ \$50,000-\$100,000 ☐ over \$100,000 (specify): _____
 7. ☐ Plaintiff's Attorney ☐ Cross Complainant's Attorney 8. ☐ Defendant's Attorney ☐ Cross Defendant's Attorney
- | | |
|---|---|
| <p>NAME _____</p> <p>ADDRESS _____</p> <p>() _____</p> <p>TELEPHONE NUMBER _____</p> | <p>NAME _____</p> <p>ADDRESS _____</p> <p>() _____</p> <p>TELEPHONE NUMBER _____</p> |
|---|---|
9. Please indicate your relationship to the case:

<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Plaintiff's attorney	<input type="checkbox"/> Defendant	<input type="checkbox"/> Defendant's attorney
<input type="checkbox"/> 3rd party defendant	<input type="checkbox"/> 3rd party defendant's attorney	<input type="checkbox"/> Other (specify): _____	
 10. Dispute resolution process:

<input type="checkbox"/> Mediation	<input type="checkbox"/> Arbitration	<input type="checkbox"/> Neutral case evaluation	<input type="checkbox"/> Other (specify): _____
------------------------------------	--------------------------------------	--	---
 11. How was case resolved?

a. <input type="checkbox"/> As a direct result of the ADR process.	b. <input type="checkbox"/> As an indirect result of the ADR process.	c. <input type="checkbox"/> Resolution was unrelated to ADR process.
--	---	--
 12. Check the closest dollar amount that you estimate you saved (attorneys fees, expert witness fees, and other costs) by using this dispute resolution process compared to resolving this case through litigation, whether by settlement or trial.

<input type="checkbox"/> \$0	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	<input type="checkbox"/> \$750	<input type="checkbox"/> \$1,000	<input type="checkbox"/> more than \$1,000 (specify): \$ _____
------------------------------	--------------------------------	--------------------------------	--------------------------------	----------------------------------	--
 13. If the dispute resolution process caused a net increase in your costs in this case, check the closest dollar amount of the additional cost:

<input type="checkbox"/> \$0	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	<input type="checkbox"/> \$750	<input type="checkbox"/> \$1,000	<input type="checkbox"/> more than \$1,000 (specify): \$ _____
------------------------------	--------------------------------	--------------------------------	--------------------------------	----------------------------------	--
 14. Check the closest number of court days that you estimate the court saved (motions, hearings, conferences, trial, etc.) as a result of this case being referred to this dispute resolution process:

<input type="checkbox"/> 0	<input type="checkbox"/> 1 day	<input type="checkbox"/> more than 1 day (specify): _____
----------------------------	--------------------------------	---
 15. If the dispute resolution process caused a net increase in court time for this case, check the closest number of additional court days:

<input type="checkbox"/> 0	<input type="checkbox"/> 1 day	<input type="checkbox"/> more than 1 day (specify): _____
----------------------------	--------------------------------	---
 16. Would you be willing to consider using this dispute resolution process again? ☐ Yes ☐ No

Form Adopted by the
Judicial Council of California
ADR-101 (New March 1, 1994)

ADR INFORMATION FORM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> EAST COUNTY DIVISION, RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	FOR COURT USE ONLY
PLAINTIFF(S)	ASSIGNED JUDGE
DEFENDANT(S)	DEPT
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	SUPERIOR COURT CASE NUMBER

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|--|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
- ☐ Other (specify e.g., private mini-trial, private judge, etc.): _____

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____ Date: _____

Name of Plaintiff _____ Name of Defendant _____

Signature _____ Signature _____

Name of Plaintiff's Attorney _____ Name of Defendant's Attorney _____

Signature _____ Signature _____

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Date: _____ Judge of the Superior Court

SDSC CIV-359 (Rev. 12/10)

**STIPULATION TO USE
ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Cal. Rules of Court, rule 3.1385

3/24 @ 2:15P.

SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

The Coca-Cola Company; Coca-Cola Refreshments USA, Inc.;
Coca-Cola Enterprises, Inc., and DOES 1-100

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Gary Kilbourne, on behalf of himself and all others similarly situated,
and on behalf the general public

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/20/2014 at 10:51:45 AM

Clerk of the Superior Court
By Alicia Fletes, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Le han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Diego
330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2014-00007465-CU-DE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William Turley, Esq./The Turley Law Firm, APLC, 625 Broadway, Suite 635, San Diego, CA 92101

DATE: 03/20/2014
(Fecha)

Clerk, by
(Secretario)

A. Fletes

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): The Coca-Cola Company

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (rev. July 1, 2009)

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 405
www.courtinfo.ca.gov

William Turley, Esq. (122408)
 David Mara, Esq. (230498)
THE TURLEY LAW FIRM, APLC
 625 Broadway, Suite 635
 San Diego, California 92101
 Telephone: (619) 234-2833
 Facsimile: (619) 234-4048

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego

03/20/2014 at 10:51:45 AM

Clerk of the Superior Court
 By Alicia Fletes, Deputy Clerk

Attorneys for Plaintiff GARY KILBOURNE
 on behalf of himself and all others similarly
 situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GARY KILBOURNE, on behalf of
 himself and all others similarly situated,
 and on behalf of the general public

Plaintiff,

v.

THE COCA-COLA COMPANY; COCA-
 COLA REFRESHMENTS USA, INC.;
 COCA-COLA ENTERPRISES, INC.,

and DOES 1-100

Defendants.

Case No. 37-2014-00007485-CU-DE-CTL

**CLASS ACTION COMPLAINT FOR
 DAMAGES, INJUNCTIVE RELIEF,
 DECLARATORY RELIEF, AND
 RESTITUTION**

- 1) Wage Theft/Time Shaving
- 2) Failure to Pay Overtime
- 3) Failure to provide meal periods (Lab. Code §§ 226.7, 512; IWC Wage Order Nos. 9-1998, 9-2000, 9-2001 (11); Cal. Code Regs. Title 8, § 11090);
- 4) Failure to authorize and permit periods (Lab. Code § 226.7; IWC Wage Order Nos. 9-1998, 9-2000, 9-2001(12); Cal. Code Regs. Title 8, §11090);
- 5) Knowing and intentional failure to comply with itemized employee wage statement provisions (Lab. Code §§ 226, 1174, 1175);
- 6) Conversion;
- 7) Fraud;
- 8) Unjust enrichment;
- 9) Waiting time penalties;
- 10) Violation of unfair competition law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

Plaintiff GARY KILBOURNE, on behalf of himself and all others similarly situated, and on behalf of the general public, complains of Defendants and/or DOES and for causes of action and alleges:

- 1 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of
2 Plaintiff GARY KILBOURNE and all employees, including but not limited to, hourly workers
3 not classified as "Exempt" or primarily employed in executive, professional, or administrative
4 capacities (hereinafter "Non-Exempt Employees") employed by, or formerly employed by,
5 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
6 COLA ENTERPRISES, INC.; and/or subsidiaries or affiliated companies and/or DOES,
7 within the State of California.
- 8 2. At all times mentioned herein, the common policies and practices of THE COCA-COLA
9 COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES,
10 INC. and/or DOES was a direct cause of Defendants' failure to comply with California's
11 wage and hours laws, Wage Orders, and/or the California Labor Code as set forth more fully
12 within.
- 13 3. For at least four years prior to the filing of this action and through to present, Defendants THE
14 COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
15 ENTERPRISES, INC. and/or DOES have had a consistent policy of requiring Non-Exempt
16 Employees within the State of California, including Plaintiff, to work through meal periods
17 and work at least five (5) hours without a meal period and failing to pay such employees one
18 (1) hour of pay at the employees' regular rate of compensation for each workday that the meal
19 period is not provided, or other compensation, as required by California's state wage and hour
20 laws and automatically deducting a half hours pay from their wages.
- 21 4. For at least four years prior to filing of this action and through the present, Defendants THE
22 COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
23 ENTERPRISES, INC. and/or DOES did not have a policy of allowing its hourly employees
24 working shifts of 10 or more hours in a day to take a second meal period of not less than thirty
25 minutes as required by the applicable Wage Order of the Industrial Welfare Commission.
- 26 5. For at least four years prior to the filing of this action and through to the present, Defendants
27 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
28 COLA ENTERPRISES, INC. and/or DOES have had a consistent policy of requiring Non-

1 Exempt Employees within the State of California, including Plaintiff, to work over ten (10)
2 hours without providing an additional, uninterrupted meal period of thirty minutes and failing
3 to pay such employees one (1) hour of pay at the employees' regular rate of compensation for
4 each workday that the meal period is not provided, or other compensation, as required by
5 California's state wage and hour laws.

6 6. For at least four years prior to the filing of this action and through to the present, Defendants
7 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
8 COLA ENTERPRISES, INC. and/or DOES have had a consistent policy of requiring Non-
9 Exempt Employees within the State of California, including Plaintiff, to work for over four
10 hours, or a major fraction thereof, without a 10 minute rest period and failing to pay such
11 employees one (1) hour of pay at the employees' regular rate of compensation for each
12 workday that the rest period is not provided, or other compensation, as required by California's
13 state wage and hour laws.

14 7. For at least four years prior to the filing of this action and through to the present, Defendants
15 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
16 COLA ENTERPRISES, INC. and/or DOES have had a continuous policy of "time shaving"
17 or not paying Plaintiff and those similarly situated for all their hours worked. Specifically,
18 Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
19 COCA-COLA ENTERPRISES, INC. and/or DOES have had a continuous and widespread
20 policy of "clocking-out" Plaintiff and those similarly situated for a thirty minute meal periods
21 (hereby referred to as "auto-meal deduct"), thereby deducting 30 minutes of paid time,
22 including straight time and overtime, even though Plaintiff and those similarly situated worked
23 through their meal periods, were not relieved of all duties, were not relinquished control over
24 their activities, were not permitted a reasonable opportunity to take an uninterrupted 30-
25 minute break and/or were impeded, discouraged and/or given an incentive to forego their meal
26 break.

27 8. For at least four years prior to filing this action and through to the present, Defendants THE
28 COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA

1 ENTERPRISES, INC. and/or DOES have knowingly and intentionally failed to comply with
2 the itemized employee wage statement provisions and have failed to pay Plaintiff and those
3 similarly situated compensation for said violations as required by California's state wage and
4 hour laws.

5 9. For at least four years prior to the filing of this action and through to the present, Defendants
6 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
7 COLA ENTERPRISES, INC. and/or DOES have wrongfully converted Plaintiff's and those
8 similarly situated Class members' wages and/or monies to their own use.

9 10. For at least four years prior to the filing of this action and through to the present, Defendants
10 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
11 COLA ENTERPRISES, INC. and/or DOES fraudulently represented to Plaintiff and those
12 similarly situated that all wages would be paid in order to induce Plaintiff and the Class he
13 seeks to represent into believing all wages would be paid and to induce Plaintiff and the Class
14 he seeks to represent to work for longer hours.

15 11. For at least four years prior to the filing of this action and through to the present, Defendants
16 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
17 COLA ENTERPRISES, INC. and/or DOES have been unjustly enriched by wrongfully and
18 unlawfully failing to pay Plaintiff and those similarly situated the wages they are owed.

19 12. For at least four years prior to the filing of this action and through to the present, Defendants
20 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
21 COLA ENTERPRISES, INC. and/or DOES and/or their officers and/or managing agents
22 willfully failed to pay, in a timely manner, wages owed to Plaintiff and members of the Class
23 who left Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS
24 USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES's employ or who were
25 terminated.

26 13. For at least four years prior to the filing of this action and through to the present, Defendants
27 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
28 COLA ENTERPRISES, INC. and/or DOES, by failing to lawfully pay Plaintiff and those

1 similarly situated all the wages they are owed, engaged in false, unfair, fraudulent and
2 deceptive business practices within the meaning of the Business and Professions Code section
3 17200, et seq.

4 14. Plaintiff GARY KILBOURNE, on behalf of himself and all Class Members, brings this action
5 pursuant to Labor Code sections 226, subdivision (b), 226.7, 510, 512, 558, 1194, and
6 California Code of Regulations, Title 8, section 11090, seeking unpaid wages and overtime,
7 unpaid rest and meal period compensation, penalties, injunctive and other equitable relief, and
8 reasonable attorneys' fees and costs.

9 15. Plaintiff GARY KILBOURNE, on behalf of himself and all Class Members, pursuant to
10 Business and Professions Code sections 17200-17208, also seeks injunctive relief, and
11 restitution, from Defendants THE COCA-COLA COMPANY; COCA-COLA
12 REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES for their
13 failure to pay straight time and overtime wages and rest and meal period compensation.

14 16. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
15 COCA-COLA ENTERPRISES, INC. and/or DOES own and operate trucks, industrial
16 trucks, industrial vehicles, and/or industrial work sites, and, at all times during the liability
17 period, have conducted business in SAN DIEGO County and elsewhere within California. At
18 these work sites and throughout California, Defendants THE COCA-COLA COMPANY;
19 COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or
20 DOES have, among other things, employed persons as truck workers, industrial truck workers,
21 industrial truck drivers, industrial vehicle drivers, and/or industrial workers.

22 17. THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
23 COLA ENTERPRISES, INC. and/or DOES' business is staffed, inter alia, by hourly Non-
24 Exempt Employees such as industrial truck workers, front office people, industrial vehicle
25 workers, and/or industrial workers and/or other hourly Non-Exempt Employees. THE COCA-
26 COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
27 ENTERPRISES, INC. and/or DOES' employees have not been paid during the liability
28

period all their straight time and overtime wages and rest and meal period compensation. Plaintiff is informed and believes, and based thereon alleges, Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES currently employ many employees in the State of California as Non-Exempt Employees.

18. During the liability period, named Plaintiff and members of the Plaintiff Class were employed by Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES as Non-Exempt Employees and were paid on an hourly basis. Plaintiff and the members of the Plaintiff Class of THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. Non-Exempt Employees were not provided all straight time and overtime wages owed and rest or meal periods or compensation in lieu thereof as mandated under the California Labor Code, and the implementing rules and regulations of the Industrial Welfare Commission's ("IWC") California Wage Orders.

19. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES are and were aware that the THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. Non-Exempt Employees were not paid all straight time and overtime wages owed nor provided rest and meal periods. Defendants' and/or DOES' denial of wages and other compensation due to Plaintiff and members of the Plaintiff Class in the position of THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. Non-Exempt Employees was willful and deliberate.

20. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES willfully failed to pay the straight time and overtime wages owed and rest and meal period wages of former THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. Non-Exempt Employees, including members of Plaintiff Class, when each such

employee quit or was discharged.

I. VENUE

21. Venue as to each Defendant THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES operate industrial facilities and employ hourly employees, conduct business, and commit Labor Code violations within SAN DIEGO County and California, and each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within SAN DIEGO County, Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES employ numerous Class Members in California and/or SAN DIEGO County.

II. PARTIES

A. Plaintiff.

22. Plaintiff GARY KILBOURNE is a resident of California, at all relevant times herein he was employed by Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES within the last four years as an industrial truck worker, industrial truck driver, industrial vehicle driver, and/or industrial worker in California. Mr. KILBOURNE was employed in a non-exempt capacity as an hourly industrial truck worker, industrial truck driver, industrial vehicle driver, and/or industrial worker.

23. On information and belief, Plaintiff and all other members of the proposed Class experienced Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES' common company policies of failing to pay all straight time and overtime wages owed, auto-meal deduct, and providing no rest

1 periods and no meal periods to employees working at least five hours or any additional meal
 2 periods for working in excess of 10 hours, or compensation in lieu thereof. On information
 3 and belief, Defendants and/or DOES willfully failed to pay their employees and members of
 4 the Plaintiff Class in a timely manner compensation owing to them upon termination of their
 5 employment with THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA,
 6 INC.; COCA-COLA ENTERPRISES, INC. and/or DOES.

7 **B. Defendants.**

- 8 24. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
 9 COCA-COLA ENTERPRISES, INC. and/or DOES are engaged in the ownership and
 10 operation of industrial vehicles and industrial work sites located within SAN DIEGO County,
 11 and throughout the State of California. During the liability period, Defendants THE COCA-
 12 COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA
 13 ENTERPRISES, INC. and/or DOES employed Plaintiff and similarly situated persons as
 14 THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
 15 COLA ENTERPRISES, INC. Non-Exempt Employees within California. On information
 16 and belief, each of the Defendants and/or DOES is conducting business in California.
 17 25. Defendants THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.;
 18 COCA-COLA ENTERPRISES, INC. and/or DOES are engaged in the ownership and
 19 operation of industrial vehicles and industrial work sites located within SAN DIEGO County,
 20 and throughout the State of California. During the liability period, Defendants and/or DOES
 21 employed Plaintiff and similarly situated persons as THE COCA-COLA COMPANY; COCA-
 22 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. Non-Exempt
 23 Employees within California.
 24 26. THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
 25 COLA ENTERPRISES, INC. and/or DOES' principal place of business is in the State of
 26 California.
 27 27. THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-
 28

COLA ENTERPRISES, INC. and/or DOES have numerous offices and/or contracts in the State of California.

28. California is the nerve center of THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES operations.

29. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

30. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant and/or DOE are legally attributable to the other Defendants and/or DOES.

III. CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to represent a Class composed of and defined as follows:

All persons who are or have been employed by Defendants and/or DOES in the State of California as hourly employee industrial truck workers, truck drivers, drivers, hourly workers, or similar job designations and titles, during the period of the relevant statute of limitations.

1 Plaintiff also seeks to represent a Subclass composed of and defined as follows:

2 All persons who are or have been employed by Defendants and/or
3 DOES in the State of California as hourly employee industrial truck
4 workers, truck drivers, drivers, hourly workers or similar job
5 designations and titles, during the period of the relevant statute of
6 limitations, who were not paid all straight time wages and overtime.

7 All persons who are or have been employed by Defendants and/or
8 DOES in the State of California as hourly employee industrial truck
9 workers, drivers, hourly workers or similar job designations and titles, during
10 the period of the relevant statute of limitations, who were subject
11 to auto-meal deduct, when they were not relieved of all duties.
12

13 All persons who are or have been employed by Defendants and/or
14 DOES in the State of California as hourly employee industrial truck
15 workers, drivers, hourly workers or similar job designations and titles,
16 during the period of the relevant statute of limitations who have not
17 been authorized and permitted to take a rest period for every four
18 hours or major fraction thereof worked per day and were not provided
19 compensation of one hour's pay or other compensation for each day
20 on which such rest periods were not authorized and permitted.
21

22 All persons who are or have been employed by Defendants and/or
23 DOES in the State of California as hourly employee industrial truck
24 workers, drivers, hourly workers, or similar job designations and titles,
25 during the period of the relevant statute of limitations who have
26 worked five and/or ten hours without being provided a meal period
27 and/or additional meal period and were not provided compensation of
28 one hour's pay or other compensation for each day on which such

meal period was not provided.

All persons who are or have been employed by Defendants and/or DOES in the State of California as hourly employee, industrial truck workers, drivers or similar job designations and titles, during the period of the relevant statute of limitations who Defendants and/or DOES willfully failed to pay in a timely manner compensation owing to them upon termination of their employment with THE COCA-COLA COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC. and/or DOES.

Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

32. This action has been brought and may properly be maintained as a class action under the provisions of section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity.

33. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants and/or DOES currently employ, and during the relevant time periods employed, thousands of employees, all in the State of California, in positions as Defendants' and/or DOES' Non-Exempt Employees in SAN DIEGO County and dispersed throughout California during the liability period and who are or have been affected by Defendants' and/or DOES' policies of shaving time, failing to pay all straight time and overtime wages, not providing meal periods or providing them more than five hours into an employee's shift, not authorizing and permitting rest periods without the appropriate legal compensation and not timely paying waiting time monies.

34. Accounting for employee turnover during the relevant periods necessarily increases this

number substantially. Upon information and belief, Plaintiff alleges Defendants' and/or DOES' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

35. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- (1) Whether Defendants and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11090, by failing to authorize, permit, and/or provide rest periods to employees for every four hours or major fraction thereof worked and/or failing to pay said employees one hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.
- (2) Whether Defendants and/or DOES violated Labor Code sections 226.7 and 512, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11090, by failing to provide meal periods to Non-Exempt Employees per every (5) hours of continuous work and/or failing to pay said employees one hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.
- (3) Whether Defendants and/or DOES violated Labor Code sections 226.7 and 512, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11090, by not relieving Non-Exempt Employees from all duties during a 30 minute meal period and not counting the time as time worked.
- (4) Whether Defendants' and/or DOES' uniform policies of establishing and

1 scheduling routes to be completed in overly demanding time frames resulted
2 in Defendant and/or DOES not providing meal and rest periods, in that said
3 policies pressured its Non-Exempt hourly industrial truck workers to complete
4 their routes within the rigorous time frames and not break route to take meal
5 and rest periods and/or not legally provide meal periods.

- 6 (5) Whether Defendants and/or DOES had a pattern and practice of pressuring its
7 hourly Non-Exempt industrial truck workers to complete routes within time
8 frames that made it impractical for THE COCA-COLA COMPANY; COCA-
9 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

10 Non-Exempt drivers to be relieved of all duty for 30 minute meal periods
11 and/or 10 minute rest periods.

- 12 (6) Whether the in existence of a policy allowing a second meal period in shifts
13 of over five (5) hours resulted in THE COCA-COLA COMPANY; COCA-
14 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

15 Non-Exempt industrial truck workers not being provided a second meal
16 period in accordance with the Labor Code and Wage Orders.

- 17 (7) Whether the in existence of a policy allowing a third rest period in shifts of
18 over ten (10) hours resulted in THE COCA-COLA COMPANY; COCA-
19 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

20 Non-Exempt industrial truck workers not being authorized and permitted to
21 take a rest period in shifts of over ten (10) hours in accordance with the Labor
22 Code and Wage Orders.

- 23 (8) Whether Defendant's and/or DOES' uniform policy of automatically
24 deducting thirty (30) minutes from its Non-Exempt industrial truck workers
25 for each day worked - regardless of whether the Non-Exempt industrial truck
26 workers were relieved of duty for thirty (30) minutes - violated the Labor
27 Code and Wage Orders.
28

- (9) Whether Defendants and/or DOES violated section 226 of the Labor Code and IWC Wage Order No. 9-2001 subsections (7)(a), (7)(b); (7)© by knowingly and intentionally failing to, among other violations, accurately report compensation owed for rest and meal period violations.
- (10) Whether Defendants and/or DOES wrongly converted Plaintiff's and Class members' wages and/or monies to their own use.
- (11) Whether Defendants and/or DOES fraudulently represented to Plaintiff and those similarly situated that all wages would be paid in order to induce Plaintiff and the Class he seeks to represent into believing all wages would be paid and to induce Plaintiff and the Class he seeks to represent to work for longer hours.
- (12) Whether Defendants and/or DOES have been unjustly enriched by wrongfully and unlawfully failing to pay Plaintiff and those similarly situated wages they are owed.
- (13) Whether Defendants and/or DOES willfully failed to pay, in a timely manner, wages owed to members of the Class who left Defendants' and/or DOES' employ or who were terminated.
- (14) Whether Defendants and/or DOES violated section 17200, et seq. of the California Business and Professions Code by shaving time, failing to pay all wages and overtime, and failing to provide rest and meal periods without compensating Non-Exempt Employees one hour's pay for every day such periods were not provided, and failing to keep accurate records of Class Members' compensation owed.
- (15) Whether Defendants and/or DOES violated Labor Code sections 510, 1194, and other provisions by shaving time and failing to pay all straight time and overtime wages owed.

1 (16) Whether Defendants and/or DOES violated Labor Code Labor Code Section
2 203 which provides for the assessment of a penalty against the employer when
3 there is a willful failure to pay wages due the employee at conclusion of the
4 employment relationship.

5 (17) Whether Defendants and/or DOES policy of deducting a half hours pay
6 regardless of whether the employee was actually provided a legally compliant
7 meal period is illegal.

8 **C. Typicality.**

9
10 36. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all
11 members of the Class sustained injuries and damages arising out of and caused by Defendants'
12 and/or DOES' common course of conduct in violation of laws and regulations that have the
13 force and effect of law and statutes as alleged.

14 **D. Adequacy of Representation.**

15 37. Plaintiff will fairly and adequately represent and protect the interests of the members of the
16 Class. Counsel who represents Plaintiff are competent and experienced in litigating large
17 employment class actions.

18 **E. Superiority of Class Action.**

19
20 38. A class action is superior to other available means for the fair and efficient adjudication of this
21 controversy. Individual joinder of all Class Members is not practicable, and questions of law
22 and fact common to the Class predominate over any questions affecting only individual
23 members of the Class. Each member of the Class has been damaged and is entitled to
24 recovery by reason of Defendants' and/or DOES' illegal policy and/or practice of failing to
25 pay all straight time and overtime wages owed, not providing meal periods, denying Class
26 Members proper rest and meal periods without legal compensation, requiring employees to
27 work in excess of ten hours per day without additional meal periods, and not compensating
28 members of the Class for all time worked.

1 39. Class action treatment will allow those similarly situated persons to litigate their claims in the
2 manner that is most efficient and economical for the parties and the judicial system. Plaintiff
3 is unaware of any difficulties that are likely to be encountered in the management of this
4 action that would preclude its maintenance as a class action.

5 **IV. CAUSES OF ACTION.**

6 **First cause of action against all Defendants and/or DOES: Wage-Theft/ Time-Shaving.**

7
8 40. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
9 every other paragraph in this Complaint herein as if fully plead.

10 41. Defendants and/or DOES have had a continuous policy of not paying Plaintiffs and those
11 similarly situated for all hours worked. Specifically, Defendants and/or DOES have a
12 continuous policy of clocking-out Plaintiffs and those similarly situated out for a thirty minute
13 meal period, even though Plaintiffs and all members of the Class work through their meal
14 periods.

15 42. Thus, Defendants and/or DOES shave/ steal earned wages from Plaintiff and each and every
16 member of the Class each and every day they work without a meal period and have time
17 deducted.

18 43. Plaintiff and those similarly situated Class members are informed and believe and thereon
19 allege that Defendants and/or DOES breached the legal duty to pay full wages to Plaintiffs by
20 automatically deducting a portion of the wages earned when Plaintiff's and the Class
21 members' actual time records indicated that a meal period was not taken. Defendants and/or
22 DOES devised an auto-meal deduct practice, manual method, electronic system, payroll
23 system and/or a computer program to edit the actual hours reported by Plaintiff and the Class
24 members, deducting a portion of the hours shown as worked hours when a meal period and/or
25 rest period was not taken during the work day and/or Plaintiff and the Class members were not
26 relieved of all duties. Defendants and/or DOES did not make reasonable efforts to determine
27 whether the time deducted was actually worked as reported by Plaintiff and the Class
28 members. Defendants and/or DOES, without a reasonable basis, presumed that actual reported

1 hours had not been accurately reported. The conduct complained of is a form of what is
 2 sometimes called "dinging," "shaving," or "scrubbing" and is prohibited by law. Defendants
 3 and/or DOES also failed to pay for the overtime that was due pursuant to Labor Code sections
 4 510 and 1194 and Industrial Welfare Commission Order No. 9-2001, item 3(A).

5 44. Plaintiff and the Class members are informed and believe and thereon allege that as a direct
 6 result of the systematic deductions in pay, resulting from application of an automatic computer
 7 program and overtime, Plaintiff and the Class members have suffered, and continue to suffer,
 8 substantial unpaid wages, and lost interest on such wages, and expenses and attorneys' fees
 9 in seeking to compel Defendants and/or DOES to fully perform their obligations under state
 10 law, all to their respective damage in amounts according to proof at time of trial. Defendants
 11 and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful
 12 and deliberate intention on injuring Plaintiff and the Class members. Defendants and/or
 13 DOES acted with malice or in conscious disregard of Plaintiff's and the Class members'
 14 rights. Plaintiff and the Class members are thus entitled to recover nominal, actual,
 15 compensatory, punitive, and exemplary damages in amounts according to proof at time of trial.
 16 Plaintiffs are also entitled to any penalties allowed by law.

17 45. As a direct result of Defendants' and/or DOES' policy of illegal time shaving/ wage theft,
 18 Plaintiffs and those similarly situated have been damaged in an amount to be proven at trial.
 19

20 **Second cause of action against all Defendants and/or DOES: Failure to pay overtime**

21 46. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
 22 every other paragraph in this Complaint herein as if fully plead.

23 47. It is fundamental that an employer must pay its employees for the time worked. California
 24 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. Labor
 25 Code section 222 prohibits the withholding on part of a wage. Labor Code section 223
 26 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section 1197
 27 prohibits the payment of less than the minimum wage. Labor Code section 224 only permits
 28 deductions from wages when the employer is required or empowered to do so by state or

1 federal law or when the deduction is expressly authorized in writing by the employee for
2 specified purposes that do not have the effect of reducing the agreed upon wage.

3 48. Defendants failed to pay overtime when employees worked over 8 hours a day and when
4 employees worked over 40 hours a week.

5 49. Plaintiff and those similarly situated Class members were employed by THE COCA-COLA
6 COMPANY; COCA-COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES,
7 INC. and/or DOES at all relevant times. Defendants and/or DOES were required to
8 compensate Plaintiffs for all hours worked and were prohibited from making deductions that
9 had the effect of reducing the agreed upon wage.

10 50. Plaintiff and those similarly situated Class members are informed and believe and thereon
11 allege that Defendants and/or DOES breached the legal duty to pay full wages to Plaintiffs by
12 automatically deducting a portion of the wages earned when Plaintiff's and the Class
13 members' actual time records indicated that a meal period was not taken. Defendants and/or
14 DOES devised a computer program to edit the actual hours reported by Plaintiff and the Class
15 members, deducting a portion of the hours shown as worked hours when a meal period and/or
16 rest period was not taken during the work day. Defendants and/or DOES did not make
17 reasonable efforts to determine whether the time deducted was actually worked as reported by
18 Plaintiff and the Class members. Defendants and/or DOES, without a reasonable basis,
19 presumed that actual reported hours had not been accurately reported. The conduct
20 complained of is a form of what is sometimes called "dinging" and is prohibited by law.
21 Defendants and/or DOES also failed to pay for the overtime that was due pursuant to Industrial
22 Welfare Commission Order No. 9-2001, item 3(A).

23 51. Plaintiff and the Class members are informed and believe and thereon allege that as a direct
24 result of the systematic deductions in pay, resulting from application of an automatic computer
25 program and overtime, Plaintiff and the Class members have suffered, and continue to suffer,
26 substantial unpaid wages, and lost interest on such wages, and expenses and attorneys' fees
27 in seeking to compel Defendants and/or DOES to fully perform their obligations under state
28

1 law, all to their respective damage in amounts according to proof at time of trial. Defendants
 2 and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful
 3 and deliberate intention on injuring Plaintiff and the Class members. Defendants and/or
 4 DOES acted with malice or in conscious disregard of Plaintiff's and the Class members'
 5 rights. In addition to compensation, Plaintiffs are also entitled to any penalties allowed by law.

6 **Third cause of action against all Defendants and/or DOES: Failure to provide meal periods or**
 7 **pay compensation in lieu thereof. (Lab. Code §§ 226.7, 512; IWC Wage Order No. 9; Cal. Code**
 8 **Regs., Title 8, § 11090).**

9 52. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
 10 every other paragraph in this Complaint herein as if fully plead.

11 53. Under California Labor Code, section 512, and Industrial Welfare Commission Wage Order
 12 No.9, no employer shall employ any person for a work period of more than five (5) hours
 13 without providing a meal period of not less than thirty (30) minutes. During this meal period
 14 of not less than thirty (30) minutes, the employee is to be completely free of the employer's
 15 control and must not perform any work for the employer. If the employee does perform work
 16 for the employer during the thirty (30) minute meal period, the employee has not been
 17 provided a meal period in accordance with the law. Also, the employee is to be compensated
 18 for any work performed during the thirty (30) minute meal period.

19 54. In addition, an employer may not employ an employee for a work period of more than ten (10)
 20 hours per day without providing the employee with another meal period of not less than thirty
 21 (30) minutes.

22 55. Under California Labor Code, section 226.7, if the employer does not provide an employee
 23 a meal period in accordance with the above requirements, the employer shall pay the employee
 24 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
 25 meal period is not provided.

26 56. Defendants and/or DOES failed to provide 30 minute, uninterrupted meal periods to its Non-
 27 Exempt Employees who worked for work periods of more than five consecutive hours. As
 28

1 such, Defendants' and/or DOES' Non-Exempt Employees were required to work well over
2 five consecutive hours at a time without being provided a 30 minute, uninterrupted meal
3 period within that time.

4 57. Defendants and/or DOES failed to provide 30 minute, uninterrupted meal periods to its Non-
5 Exempt Employees for every five continuous hours its Non-Exempt Employees worked.

6 58. Defendants' and/or DOES' business model was such that Non-Exempt Employees were
7 assigned too much work that could not be reasonably completed in their assigned shift, work
8 and/or route. The end result is that Defendants' and/or DOES' Non-Exempt Employees
9 routinely and regularly are forced to eat their meals while driving and/or while working their
10 routes.

11 59. Throughout the statutory period, Defendants and/or DOES had a pattern and practice of
12 assigning too much work to be completed in too short of time frames, which resulted in
13 Plaintiff and those similarly situated not breaking route to take meal and rest periods.

14 60. Throughout the statutory period, Defendants and/or DOES valued productivity over providing
15 meal and rest periods and, because of this, meal and rest periods were not priorities to
16 Defendants and/or DOES.

17 61. Throughout the statutory period, Defendants' and/or DOES' policies promoting productivity
18 subjugated Plaintiff's and those similarly situated's rights to meal and rest periods.

19 62. Because of Defendants' and/or DOES' demanding policies on route completion times,
20 Plaintiff and those similarly situated felt that breaking route to exercise their rights to take
21 meal or rest periods would sacrifice their jobs with THE COCA-COLA COMPANY; COCA-
22 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

23 63. Based on Defendants' and/or DOES' demanding route completion time policies, Plaintiff and
24 those similarly situated routinely worked through their meal periods, which compromised the
25 health and welfare of, not only the Plaintiff and those similarly situated, but all members of
26 the general public.
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64. Throughout the statutory period, Defendants and/or DOES had no policy that advised Plaintiff and those similarly situated of their right to take a second meal period.

65. Defendants and/or DOES thereby failed to provide an additional 30 minute uninterrupted meal period for employees on days where they worked in excess of ten hours.

66. Failing to provide compensation for such unprovided or improperly provided meal periods, as alleged above, Defendants and/or DOES willfully violated the provisions of Labor Code sections 226.7, 512 and IWC Wage Order No. 9.

67. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226, 226.7, and IWC Wage Order Nos. 9-1998, 9-2000, and 9-2001. Plaintiff and the Class Members he seeks to represent did not willfully waive their right to take meal periods through mutual consent with Defendants and/or DOES.

68. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

Fourth cause of action against all Defendants and/or DOES: Failure to authorize and permit rest periods or pay compensation in lieu thereof (Lab. Code § 226.7; IWC Wage Order No. 9; Cal. Code Regs., Title 8, § 11090).

69. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

70. Defendants and/or DOES failed to authorize and permit its Non-Exempt Employees to take 10 minute rest periods per every four hours worked or major fraction thereof.

71. Defendants' and/or DOES' business model was such that Non-Exempt Employees were assigned too much work that could not be reasonably completed in their assigned shift, work and/or route. The end result is that Defendants' and/or DOES' Non-Exempt Employees routinely and regularly are forced to work through their rest periods.

72. Throughout the statutory period, Defendants and/or DOES had a pattern and practice of

1 assigning too much work to be completed in too short of time frames, which resulted in
2 Plaintiff and those similarly situated not breaking route to take meal and rest periods.

3 73. Throughout the statutory period, Defendants and/or DOES valued productivity over providing
4 meal and rest periods and, because of this, meal and rest periods were not priorities to
5 Defendants and/or DOES.

6 74. Throughout the statutory period, Defendants' and/or DOES' policies promoting productivity
7 subjugated Plaintiff's and those similarly situated's rights to meal and rest periods.

8 75. Because of Defendants' and/or DOES' demanding policies on route completion times,
9 Plaintiff and those similarly situated felt that breaking route to exercise their rights to take
10 meal or rest periods would sacrifice their jobs with THE COCA-COLA COMPANY; COCA-
11 COLA REFRESHMENTS USA, INC.; COCA-COLA ENTERPRISES, INC.

12 76. Based on Defendants' and/or DOES' demanding route policies, Plaintiff and those similarly
13 situated routinely worked through their rest periods, which compromised the health and
14 welfare of, not only the Plaintiff and those similarly situated, but all members of the general
15 public.

16 77. Throughout the statutory period, Defendants and/or DOES had no policy that advised Plaintiff
17 and those similarly situated of their right to take an additional rest period in shifts exceeding
18 10 hours in a day.

19 78. Thus, Plaintiff and those similarly situated had no way of knowing they were to be authorized
20 and permitted a ten minute rest period when working in excess of 10 hours a day.

21 79. By its failure to authorize and permit its Non-Exempt Employees to take rest periods for every
22 four hours or major fraction thereof worked per day, Defendants and/or DOES willfully
23 violated provisions of Labor Code section 226.7 and IWC Wage Order Nos. 9-1998, 9-2000,
24 and 9-2001. Plaintiff and the Class Members he seeks to represent did not willfully waive
25 their right to take rest periods through mutual consent with Defendants and/or DOES.

26 80. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the Class he seeks
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1 to represent have been deprived of premium wages in amounts to be determined at trial, and
 2 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
 3 and costs, under Labor Code sections 226, 226.7, and IWC Wage Orders 9-1998, 9-2000, 9-
 4 2001.

5 81. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below
 6 **Fifth cause of action against all Defendants and/or DOES: Knowing and intentional failure to**
 7 **comply with itemized employee wage statement provisions (Lab. Code §§ 226, 1174, 1175; IWC**
 8 **Wage Order No. 9; Cal. Code Regs., Title 8, § 11090).**

9
 10 82. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
 11 every other paragraph in this Complaint herein as if fully plead.

12 83. Section 226, subdivision (a), of the California Labor Code requires Defendants and/or DOES
 13 to itemize in wage statements all deductions from payment of wages and to accurately report
 14 total hours worked by Plaintiff and the members of the proposed Class. Defendants and/or
 15 DOES have knowingly and intentionally failed to comply with Labor Code section 226,
 16 subdivision (a), on each and every wage statement provided to Plaintiff and members of the
 17 proposed Class.

18 84. Section 1174 of the California Labor Code requires Defendants and/or DOES to maintain and
 19 preserve, in a centralized location, records showing the hours worked daily by and the wages
 20 paid to its employees. Defendants and/or DOES have knowingly and intentionally failed to
 21 comply with Labor Code section 1174. The failure of Defendants and/or DOES, and each of
 22 them, to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section
 23 1175.

24 85. Defendants and/or DOES failed to maintain time records - as required by IWC Wage Order
 25 Nos. 9-2001(7), 9-2000(7) and 9-1998(7) - showing, among other things, when the employee
 26 begins and ends each work period, meal period, and total daily hours worked in itemized wage
 27 statements, and all deductions from payment of wages, and to accurately report total hours
 28 worked by Plaintiff and the members of the proposed Class.

1 86. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

2 Sixth cause of action against all Defendants and/or DOES: Conversion.

3 87. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
4 every other paragraph in this Complaint herein as if fully plead.

5 88. At all times mentioned herein, Plaintiff and the Class he seeks to represent had an ownership
6 interest in the wages owed for Defendants' and/or DOES' failure to comply with the laws
7 respecting meal and rest periods.

8 89. Defendants and/or DOES never paid Plaintiff and the Class he seeks to represent the wages
9 owed for Defendants' and/or DOES' failure to comply with the laws respecting meal and rest
10 periods.

11 90. At all times mentioned herein, Plaintiff and the Class he seeks to represent, never consented
12 to Defendants and/or DOES taking said wages owed to Plaintiff and the Class he seeks to
13 represent.

14 91. At all times mentioned herein, Plaintiff and the Class he seeks to represent, were harmed by
15 Defendants' and/or DOES' failure to pay wages owed to Plaintiff and the Class he seeks to
16 represent.

17 92. At all times mentioned herein, Defendants and DOES and each of them wrongfully converted
18 such wages and/or monies to their own use.

19 93. At all times mentioned herein, Defendants' and DOES' policies and practices resulted in the
20 conversion of Plaintiff's wages and those similarly situated.

21 94. Such conversion was wrongful because such wages belonged to the employees.

22 95. At all times mentioned herein, Defendants and/or DOES fully realized what they were doing.
23 They fully realized that they were stealing money from Plaintiff and those similarly situated.

24 96. Defendant and/or DOES fully realized that Plaintiffs and those similarly situated were
25 unsophisticated and not likely to appreciate, understand and/or comprehend that Defendants
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- 1 and/or DOES were wrongfully converting, taking and/or stealing their wages.
- 2 97. At all times mentioned herein, Defendants and/or DOES fully realized that Plaintiffs and those
- 3 similarly situated were in a relatively disadvantaged situation. Defendants and/or DOES
- 4 preyed on Plaintiff and those similarly situated because Plaintiff and those similarly situated
- 5 were economically disadvantaged.
- 6 98. At all times mentioned herein, said violations were conscious, deliberate, intentional and/or
- 7 malicious.
- 8 99. At all times mentioned herein, said conversion was conscious, deliberate, intentional and/or
- 9 malicious.
- 10
- 11 100. At all times mentioned herein, Defendants and/or DOES and/or persons acting on their behalf
- 12 knew that they could take advantage of these workers' rights because they knew they could
- 13 prey on the relative un-sophistication of the workers.
- 14 101. Plaintiff and most of the Class he proposes to represent are not well educated, have little
- 15 sophistication with the law - including the California Labor Code.
- 16 102. At all times mentioned herein, the acts, omissions and/or conduct on the part of Defendants
- 17 and/or DOES and/or persons acting on their behalf was downright malice.
- 18 103. At all times mentioned herein, Defendants and/or DOES and/or persons acting on their behalf
- 19 fully realized that they were stealing the money from innocent and relatively helpless workers.
- 20 104. As a direct result of Defendants and/or DOES conversion; Plaintiff and those similarly situated
- 21 were damaged in an amount to be proven at time of trial.
- 22
- 23 105. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.
- 24 **Seventh cause of action against all Defendants and/or DOES: Fraud.**
- 25 106. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
- 26 every other paragraph in this Complaint herein as if fully plead.
- 27
- 28 107. At all times mentioned herein, Defendant and/or DOES had a pattern and practice of

1 fraudulently altering Plaintiff's and other similarly situated employees' time records and/or
2 wage records in order for Defendants and/or DOES to not have to pay the wages to Plaintiff
3 and those similarly situated.

4 108. Defendant and/or DOES promised Plaintiff and the Class he seeks to represent to pay Plaintiff
5 and the Class he seeks to represent all wages earned, which includes, but is not limited to,
6 wages earned from not being provided meal periods in accordance with the applicable
7 California law and wages earned from not being authorized and permitted to take rest periods
8 in accordance with the applicable California law.

9 109. At all times mentioned herein, Defendants and/or DOES knew that they would deprive
10 Plaintiff and the Class he seeks to represent wages owed for unprovided meal periods and non-
11 authorized and permitted rest periods.

12 110. At all times mentioned herein, Defendants and/or DOES falsely promised Plaintiff and the
13 Class he seeks to represent that all wages would be paid in order to induce Plaintiff and the
14 Class he seeks to represent into believing all wages would be paid and to induce Plaintiff and
15 the Class he seeks to represent to work for longer hours.

16 111. At all times mentioned herein, Plaintiff and the Class he seeks to represent justifiably relied
17 on Defendants' and/or DOES' promises that all wages would be paid.

18 112. As a result of this justifiable reliance on Defendants' and/or DOES' fraudulent promises,
19 Plaintiff and the Class worked through meal periods and rest periods and suffered damages
20 and/or lost wages in an amount to be proven at the time of trial in not being properly
21 compensated.

22 113. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

23 **Eighth cause of action against all Defendants and/or DOES: Unjust enrichment.**

24 114. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
25 every other paragraph in this Complaint herein as if fully plead.

26 115. At all times mentioned herein, there was an unjust benefit to Defendants and/or DOES due to
27
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1 Defendants' and/or DOES' actions in wrongfully and unlawfully failing to pay Plaintiff and
2 the Class he seeks to represent wages owed.

3 116. At all times mentioned herein, Defendants and/or DOES were under a duty to follow the wage
4 and hour laws in regards to Defendants' and/or DOES' California employees.

5 117. At all times mentioned herein, Defendants and/or DOES wrongfully invaded the rights of
6 Plaintiff and others similarly situated.

7 118. At all times mentioned herein, there was an unjust retention of Plaintiff's and others similarly
8 situated's wages.

9 119. At all times mentioned herein, Defendants and/or DOES were in receipt of wages and/or
10 monies which belonged to Plaintiff and those similarly situated.

11 120. At all times mentioned herein, Defendants and/or DOES breached their duty to follow
12 California's wage and hour laws in regards to their California employees.

13 121. At all times mentioned herein, said unjust enrichment was conscious, deliberate, intentional
14 and/or malicious.

15 122. As a direct result of Defendants' and/or DOES' breach of California's wage and hour laws;
16 Plaintiff and those similarly situated suffered damage.

17 123. As a direct result of Defendants' and/or DOES' unjust conversion; Plaintiffs and those
18 similarly situated were damaged in an amount to be proven at time of trial.

19 124. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

20
21
22 **Ninth cause of action against all Defendants and/or DOES: Waiting time penalties under Labor**
23 **Code section 203.**

24 125. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
25 every other paragraph in this Complaint herein as if fully plead.

26 126. Numerous members of the Class are no longer employed by Defendants and/or DOES. They
27 were either fired or quit Defendants' and/or DOES' employ. Defendants and/or DOES did not
28

1 pay all timely wages owed, straight-time wages owed, overtime wages owed, meal period
2 premiums, and/or rest period premiums owed at the time of termination.

3 127. The Defendants' and/or DOES' failure to pay wages, as alleged above, was willful in that
4 Defendants and/or DOES and each of them knew the wages to be due but failed to pay them,
5 thus entitling members of the Class to penalties under Labor Code, section 203, which
6 provides that an employee's wages shall continue as a penalty until paid for a period of up to
7 thirty (30) days from the time they were due.

8 128. Defendants and/or DOES have failed to pay Plaintiff and those similarly situated Class
9 members a sum certain at the time of termination or within seventy-two (72) hours of their
10 resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the
11 provisions of Labor Code, section 203, Plaintiff and the Class are entitled to a penalty in the
12 amount of Plaintiff's and those similarly situated Class Members' daily wage multiplied by
13 thirty (30) days.

14 129. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.
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18 **Tenth cause of action against all Defendants and/or DOES: Violation of unfair competition law**
19 **(California Bus. & Prof. Code, § 17200, et seq.)**

20 130. Plaintiff and those similarly situated Class members hereby incorporate by reference each and
21 every other paragraph in this Complaint herein as if fully plead.

22 131. Defendants' and/or DOES' failure to pay all straight time and overtime wages owed, Labor
23 Code 203 wages, and failure to compensate for unprovided or improperly provided rest and
24 meal periods to Plaintiff and members of the Plaintiff Class, under the IWC Wage Orders and
25 under the California Labor Code, and failure to keep proper records, as alleged herein,
26 constitutes unlawful activity prohibited by California Business and Professions Code section
27 17200, et seq.
28

1 132. The actions of Defendants and/or DOES in failing to pay Plaintiff and members of the Plaintiff
2 Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive
3 business practices, within the meaning of California Business and Professions Code section
4 17200, et seq.

5 133. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices
6 in order to prevent future damage, for which there is no adequate remedy at law, and to avoid
7 a multiplicity of lawsuits. Plaintiff brings this cause individually and as a member of the
8 general public actually harmed and as a representative of all others subject to Defendants'
9 and/or DOES' unlawful acts and practices.

10 134. As a result of their unlawful acts, Defendants and/or DOES have reaped and continue to reap
11 unfair benefits at the expense of Plaintiff and the Class he seeks to represent. Defendants
12 and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains
13 and restore Plaintiff and the members of the Plaintiff Class the wrongfully withheld wages and
14 overtime compensation pursuant to Business and Professions Code section 17203. Plaintiff
15 is informed and believes, and thereon alleges, that Defendants and/or DOES are unjustly
16 enriched through their failure to provide meal periods, authorize and permit rest periods,
17 and/or appropriate compensation in lieu of meal and rest periods to Plaintiff and members of
18 the Plaintiff Class.

19 135. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
20 Plaintiff Class are prejudiced by Defendants' and/or DOES' unfair trade practices.

21 136. As a direct and proximate result of the unfair business practices of Defendants and/or DOES,
22 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is
23 entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all
24 wages and premium pay which have been unlawfully withheld from Plaintiff and members of
25 the Plaintiff Class as a result of the business acts and practices described herein and enjoining
26 Defendants and/or DOES from engaging in the practices described herein.

27 137. The illegal conduct alleged herein is continuing, and there is no indication that Defendants
28

1 and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if
 2 Defendants and/or DOES are not enjoined from the conduct set forth in this Complaint, they
 3 will continue to require employees to work through meal and/or second meal periods and/or
 4 work five hours or more without receiving a meal period, will continue to fail to authorize and
 5 permit rest periods or provide appropriate compensation in lieu thereof, and will continue to
 6 fail to pay and to avoid paying wages, appropriate taxes, insurance, and unemployment
 7 withholdings.

8 138. Plaintiff further requests that the Court issue a preliminary and permanent injunction
 9 prohibiting Defendants and/or DOES from requiring Plaintiff and the Plaintiff Class to work
 10 through meal periods, and from continuing to fail to provide rest periods and meal periods or
 11 provide appropriate compensation in lieu thereof.

12 139. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.
 13

14 **V. PRAYER FOR RELIEF.**

- 15 1. That the Court determine that this action may be maintained as a Class action;
- 16 2. For compensatory damages in an amount according to proof with interest thereon;
- 17 3. For unpaid wages in an amount according to proof with interest at time of trial;
- 18 4. For all monies for the violations of California Labor Code section 226.7;
- 19 5. For economic and/or special damages in an amount according to proof with interest
- 20 thereon;
- 21 6. For all waiting time penalties owed;
- 22 7. That Defendants and/or DOES be found to have engaged in unfair competition in
- 23 violation of section 17200, et seq. of the California Business and Professions Code;
- 24 8. That Defendants and/or DOES be ordered and enjoined to make restitution to
- 25 Plaintiff and the Class due to their unfair competition,, pursuant to California
- 26 Business and Professions Code sections 17203 and 17204;
- 27 9. That Defendants and/or DOES be enjoined from continuing the illegal course of
- 28

1 conduct alleged herein;

2 10. That Defendants and/or DOES further be enjoined to cease and desist from unfair
3 competition in violation of section 17200, et seq. of the California Business and
4 Professions Code;

5 11. That Defendants and/or DOES be enjoined from further acts of restraint of trade
6 and unfair competition;

7 12. For attorneys' fees;

8 13. For interest accrued to date;

9 14. For costs of suit and expenses incurred herein; and

10 15. For such other and further relief as the Court deems just and proper.

11 Dated: March 19, 2014

12 **THE TURLEY LAW FIRM**

13 

14 William Turley, Esq.

15 David Mara, Esq.

16 Representing Plaintiff GARY KILBOURNE
17 on behalf of himself and all others similarly
18 situated, and on behalf of the general public

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